

No. 23-3214

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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UNITED STATES OF AMERICA,  
*Plaintiff-Appellant,*

*v.*

YASIEL PUIG VALDES,  
*Defendant-Appellee.*

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*APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
DISTRICT COURT No. CR 22-394(A)-DMG*

**EXCERPTS OF RECORD  
VOLUME II OF II**

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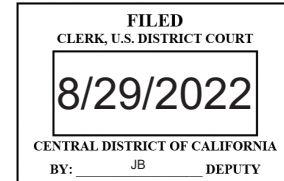
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## UNITED STATES DISTRICT COURT

## FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

YASIEL PUIG VALDES,

Defendant.

CR No. 2:22-cr-00394-JLS

I N F O R M A T I O N[18 U.S.C. § 1001(a)(2): Making  
False Statements]

The Acting United States Attorney charges:

[18 U.S.C. § 1001(a)(2)]

A. INTRODUCTORY ALLEGATIONS

At times relevant to this Information:

1. Defendant YASIEL PUIG VALDES was a professional baseball player who played for the Los Angeles Dodgers between 2013 and 2018. The Dodgers traded defendant PUIG to the Cincinnati Reds in December 2018, and the Reds traded defendant PUIG to the Cleveland Indians on July 31, 2019. As of June 2022, defendant PUIG played for the Kiwoom Heroes of the Korean Baseball Organization League, based in South Korea.

2. The Department of Homeland Security, Homeland Security Investigations ("HSI") and the Internal Revenue Service - Criminal

1 Investigation Division ("IRS-CI") in Los Angeles and the United  
2 States Attorney's Office ("USAO") for the Central District of  
3 California were conducting a federal criminal investigation into  
4 federal crimes, including illegal sports gambling and money  
5 laundering (the "Federal Investigation").

6 3. The operation of a sports gambling business in California  
7 was prohibited by 18 U.S.C. § 1955 and California Penal Code § 337a.

8 The Wayne Nix Illegal Sports Gambling Business

9 4. Wayne Nix was a resident of Orange County, California. Nix  
10 was a minor league baseball player from 1995 to 2001.

11 5. Sometime after 2001, Nix began operating an illegal  
12 bookmaking business in the Los Angeles area that accepted and paid  
13 off bets from bettors in California and elsewhere in the United  
14 States based on the outcomes of sporting events at agreed-upon odds  
15 (the "Nix Gambling Business"). Through contacts he had developed  
16 during his own career in professional sports, Nix created a client  
17 list of current and former professional athletes, and others.

18 6. Nix used agents to place and accept bets from others for  
19 the Nix Gambling Business, thus expanding the business.

20 7. Sand Island Sports operated Internet sports gambling  
21 websites, including [www.sandislandsports.com](http://www.sandislandsports.com) and [www.betprestige.com](http://www.betprestige.com)  
22 (hereinafter, the "Sand Island Sports websites"), hosted on servers  
23 primarily located outside the United States. Sand Island Sports also  
24 operated toll-free telephone services (the "call center") to  
25 facilitate sports betting. The Sand Island Sports websites and call  
26 center facilitated unlawful sports gambling by providing a platform  
27 to book makers to track bets placed by their clients.  
28

1           8.     Agent 1 was a former collegiate baseball player and a  
2 private baseball coach. Beginning in 2019, Agent 1 worked for the  
3 Nix Gambling Business as an agent. Agent 1 placed and accepted bets  
4 from others and helped Nix maintain the Nix Gambling Business by,  
5 among other things, demanding and collecting money owed to the Nix  
6 Gambling Business by bettors and others.

7           9.     As part of the Nix Gambling Business, Nix and Agent 1 used  
8 the Sand Island Sports websites and call center to create accounts  
9 through which wagers would be placed and tracked, and to set credit  
10 limits for bettors.

11          10.    Nix provided bettors with account numbers and passwords for  
12 the Sand Island Sports websites and directed the bettors to use the  
13 Sand Island Sports websites to place bets with the Nix Gambling  
14 Business.

15          11.    Bettors would place bets online through the Sand Island  
16 Sports websites, and through Nix, Agent 1, and others working at  
17 Nix's direction.

18          12.    In January 2019, defendant PUIG met Agent 1 at a youth  
19 baseball camp, and Agent 1 later assisted defendant PUIG in preparing  
20 for the upcoming baseball season.

21          13.    Individual A was a client of the Nix Gambling Business who,  
22 in or about June 2019, was owed at least \$200,000 in gambling  
23 winnings from the Nix Gambling Business.

24          14.    Individual B was a private baseball coach who assisted  
25 defendant PUIG in placing sports bets with Agent 1 and assisted Agent  
26 1's efforts to collect gambling debts from defendant PUIG.

1                   Defendant PUIG's Use of the Nix Gambling Business

2           15. Beginning no later than May 2019, defendant PUIG began  
3 placing bets on sporting events with the Nix Gambling Business  
4 through Agent 1. By June 17, 2019, defendant PUIG owed the Nix  
5 Gambling Business \$282,900 for sports gambling losses.

6           16. Between June 25, 2019, and July 3, 2019, in a series of  
7 text messages, Agent 1 and Individual B instructed defendant PUIG to  
8 make a check or wire transfer payable to Individual A.

9           17. On June 25, 2019, defendant PUIG withdrew \$200,000 from a  
10 Bank of America financial center in Glendale, California, and  
11 purchased two cashiers' checks for \$100,000 each that were made  
12 payable to Individual A.

13           18. On July 3, 2019, defendant PUIG sent the cashiers' checks  
14 to Individual A via the United Parcel Service ("UPS") and sent a  
15 photo of the UPS shipping label to Agent 1 and Individual B via text  
16 message.

17           19. On July 4, 2019, via text message, Nix provided defendant  
18 PUIG direct access to the Sand Island Sports websites, assigned  
19 defendant PUIG player identification number "R182" and password "yp,"  
20 and provided defendant PUIG the Sand Island Sports website addresses.

21           20. Between July 4, 2019, and September 29, 2019, defendant  
22 PUIG placed 899 bets on sporting events through the Nix Gambling  
23 Business, Agent 1, and Sand Island Sports.

24                   Investigation into Wayne Nix and Agent 1

25           21. On January 27, 2022, defendant PUIG was interviewed in the  
26 presence of his attorney by HSI, IRS-CI, and the USAO regarding the  
27 Federal Investigation, including the cashiers' checks defendant PUIG  
28

1 sent to Individual A. Defendant PUIG, through his counsel, requested  
2 that HSI not record the interview.

3 22. At the beginning of the interview, a Special Agent from HSI  
4 admonished defendant PUIG that lying to federal law enforcement  
5 agents is a crime, and defendant PUIG stated that he understood.

6 B. FALSE STATEMENTS

7 23. On or about January 27, 2022, in Los Angeles County, within  
8 the Central District of California, and affecting the Federal  
9 Investigation in the Central District of California, and in a matter  
10 within the jurisdiction of the executive branch of the government of  
11 the United States, namely, HSI, IRS-CI, and the USAO, defendant PUIG  
12 knowingly and willfully made materially false statements and  
13 representations to HSI, IRS-CI, and the USAO knowing that these  
14 statements and representations were untrue:

15 a. Defendant PUIG falsely stated that he had never  
16 discussed sports betting with Agent 1. In fact, as defendant PUIG  
17 then knew, defendant PUIG discussed sports betting with Agent 1 via  
18 telephone and text messages on numerous occasions, and Agent 1  
19 assisted defendant PUIG in placing at least 899 bets on sporting  
20 events between in or about May 2019 and on or about September 29,  
21 2019.

22 b. Defendant PUIG falsely stated that he had placed a bet  
23 online with an unknown person on an unknown website which resulted in  
24 a loss of \$200,000. In fact, as defendant PUIG then knew, defendant  
25 PUIG placed a series of bets directly through Agent 1 that resulted  
26 in the gambling loss, and not through a website.

27 c. Defendant PUIG falsely stated that he did not know the  
28 individual who instructed him to send \$200,000 in cashiers' checks to

1 Individual A and that he had never communicated with that person via  
2 text message. In fact, as defendant PUIG then knew, Agent 1 and  
3 Individual B, who defendant PUIG knew, instructed defendant PUIG via  
4 text messages to send \$200,000 to Individual A, and defendant PUIG  
5 had communicated with Agent 1 and Individual B on multiple occasions.

6  
7 STEPHANIE S. CHRISTENSEN  
8 Acting United States Attorney

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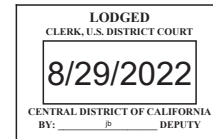
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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

YASIEL PUIG VALDES,

Defendant.

No. CR 2:22-cr-00394-JLS

PLEA AGREEMENT FOR DEFENDANT  
YASIEL PUIG VALDES

1. This constitutes the plea agreement between YASIEL PUIG VALDES ("defendant") and the United States Attorney's Office for the Central District of California (the "USAO") in the above-captioned case. This agreement is limited to the USAO and cannot bind any other federal, state, local, or foreign prosecuting, enforcement, administrative, or regulatory authorities.

DEFENDANT'S OBLIGATIONS

2. Defendant agrees to:



1           a.     Give up the right to indictment by a grand jury and,  
2     at the earliest opportunity requested by the USAO and provided by the  
3     Court, appear and plead guilty to a single-count information in the  
4     form attached to this agreement as Exhibit A or a substantially  
5     similar form, which charges defendant with Making False Statements in  
6     violation of 18 U.S.C. § 1001(a)(2).

7           b.     Not contest facts agreed to in this agreement.

8           c.     Abide by all agreements regarding sentencing contained  
9     in this agreement.

10          d.     Appear for all court appearances, surrender as ordered  
11     for service of sentence, obey all conditions of any bond, and obey  
12     any other ongoing court order in this matter.

13          e.     Not commit any crime; however, offenses that would be  
14     excluded for sentencing purposes under United States Sentencing  
15     Guidelines ("USSG" or "Sentencing Guidelines") § 4A1.2(c) are not  
16     within the scope of this agreement.

17          f.     Be truthful at all times with the United States  
18     Probation and Pretrial Services Office and the Court.

19          g.     Pay the applicable special assessment at or before the  
20     time of sentencing unless defendant has demonstrated a lack of  
21     ability to pay such assessments.

22          h.     Recommend that defendant receive, as part of his  
23     sentence, a fine in an amount no less than \$55,000 and not to argue,  
24     or suggest in any way, either orally or in writing, that a lower fine  
25     amount be imposed.

26                               THE USAO'S OBLIGATIONS

27          3.     The USAO agrees to:

28          a.     Not contest facts agreed to in this agreement.



- b) The statement was made in a matter within the jurisdiction of a federal law enforcement agency;
- c) The defendant acted willfully; that is, the defendant acted deliberately and with knowledge both that the statement was untrue and that his conduct was unlawful; and
- d) The statement was material to the activities or decisions of the law enforcement agency; that is, it had a natural tendency to influence, or was capable of influencing, the agency's decisions or activities.

#### PENALTIES

5. Defendant understands that the statutory maximum sentence that the Court can impose for a violation of 18 U.S.C. § 1001(a)(2), is: five years' imprisonment; a three-year period of supervised release; a fine of \$250,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest; and a mandatory special assessment of \$100.

6. Defendant understands that supervised release is a period of time following imprisonment during which defendant will be subject to various restrictions and requirements. Defendant understands that if defendant violates one or more of the conditions of any supervised release imposed, defendant may be returned to prison for all or part of the term of supervised release authorized by statute for the offense that resulted in the term of supervised release, which could result in defendant serving a total term of imprisonment greater than the statutory maximum stated above.

7. Defendant understands that, by pleading guilty, defendant may be giving up valuable government benefits and valuable civic

1 rights, such as the right to vote, the right to possess a firearm,  
2 the right to hold office, and the right to serve on a jury. Defendant  
3 understands that he is pleading guilty to a felony and that it is a  
4 federal crime for a convicted felon to possess a firearm or  
5 ammunition. Defendant understands that the conviction in this case  
6 may also subject defendant to various other collateral consequences,  
7 including but not limited to revocation of probation, parole, or  
8 supervised release in another case and suspension or revocation of a  
9 professional license. Defendant understands that unanticipated  
10 collateral consequences will not serve as grounds to withdraw  
11 defendant's guilty plea.

12 8. Defendant and his counsel have discussed the fact that, and  
13 defendant understands that, if defendant is not a United States  
14 citizen, the conviction in this case makes it practically inevitable  
15 and a virtual certainty that defendant will be removed or deported  
16 from the United States. Defendant may also be denied United States  
17 citizenship and admission to the United States in the future.  
18 Defendant understands that while there may be arguments that  
19 defendant can raise in immigration proceedings to avoid or delay  
20 removal, removal is presumptively mandatory and a virtual certainty  
21 in this case. Defendant further understands that removal and  
22 immigration consequences are the subject of a separate proceeding and  
23 that no one, including his attorney or the Court, can predict to an  
24 absolute certainty the effect of his conviction on his immigration  
25 status. Defendant nevertheless affirms that he wants to plead guilty  
26 regardless of any immigration consequences that his plea may entail,  
27 even if the consequence is automatic removal from the United States.  
28

FACTUAL BASIS

9. Defendant admits that defendant is, in fact, guilty of the offense to which defendant is agreeing to plead guilty. Defendant and the USAO agree to the statement of facts provided below and agree that this statement of facts is sufficient to support a plea of guilty to the charge described in this agreement and to establish the Sentencing Guidelines factors set forth in paragraph 11 below but is not meant to be a complete recitation of all facts relevant to the underlying criminal conduct or all facts known to either party that relate to that conduct.

The Department of Homeland Security, Homeland Security Investigations ("HSI") and the Internal Revenue Service - Criminal Investigation Division ("IRS-CI") in Los Angeles and the United States Attorney's Office ("USAO") for the Central District of California were conducting a federal criminal investigation into federal crimes, including illegal sports gambling and money laundering (the "Federal Investigation").

Wayne Nix was a minor league baseball player from 1995 to 2001. Sometime after 2001, Nix began operating an illegal bookmaking business in the Los Angeles area that accepted and paid off bets from bettors in California and elsewhere in the United States based on the outcomes of sporting events at agreed-upon odds (the "Nix Gambling Business"). Through contacts he had developed during his own career in professional sports, Nix created a client list of current and former professional athletes, and others.

Nix used agents, including Agent 1, to place and accept bets from others for the Nix Gambling Business, thus expanding the business. Agent 1 was a former collegiate baseball player and a

1 private baseball coach. Beginning in 2019, Agent 1 worked for the  
2 Nix Gambling Business as an agent. Agent 1 placed and accepted bets  
3 from others and helped Nix maintain the Nix Gambling Business by,  
4 among other things, demanding and collecting money owed to the Nix  
5 Gambling Business by bettors and others.

6 As part of the Nix Gambling Business, Nix and Agent 1 used the  
7 Sand Island Sports websites and call center to create accounts  
8 through which wagers would be placed and tracked. Nix provided  
9 bettors with account numbers and passwords for the Sand Island Sports  
10 websites and directed the bettors to use the Sand Island Sports  
11 websites to place bets with the Nix Gambling Business. Bettors would  
12 place bets online through the Sand Island Sports websites, and  
13 through Nix, Agent 1, and others working at Nix's direction.

14 Defendant was a professional baseball player who played for the  
15 Los Angeles Dodgers between 2013 and 2018. The Dodgers traded  
16 defendant to the Cincinnati Reds in December 2018, and the Reds  
17 traded defendant to the Cleveland Indians on July 31, 2019.

18 In January 2019, defendant met Agent 1 at a youth baseball camp,  
19 and Agent 1 later assisted defendant in preparing for the upcoming  
20 baseball season. Individual B was a private baseball coach who  
21 assisted defendant with batting practice, but also assisted defendant  
22 in placing sports bets with Agent 1 and assisted Agent 1's efforts to  
23 collect gambling debts from defendant.

24 Beginning no later than May 2019, defendant began placing bets  
25 on sporting events with the Nix Gambling Business through Agent 1.  
26 Defendant called and sent text messages to Agent 1 with wagers on  
27 sporting events. After Agent 1 received the wagers from defendant,  
28 Agent 1 submitted the bets to the Nix Gambling Business on behalf of

1 defendant. By June 17, 2019, defendant owed the Nix Gambling  
2 Business \$282,900 for sports gambling losses.

3 Between June 25, 2019, and July 3, 2019, in a series of text  
4 messages, Agent 1 and Individual B instructed defendant to make a  
5 check or wire transfer payable to Individual A. Individual A was a  
6 client of the Nix Gambling Business who, in or about June 2019, was  
7 owed at least \$200,000 in gambling winnings from the Nix Gambling  
8 Business.

9 On June 25, 2019, defendant withdrew \$200,000 from a Bank of  
10 America financial center in Glendale, California, and purchased two  
11 cashiers' checks for \$100,000 each that were made payable to  
12 Individual A, but did not immediately send the checks due to a  
13 dispute over the balance and access to the Sand Island Sports  
14 website. Between June 28, 2019, and July 4, 2019, defendant  
15 requested direct access to the Sand Island Sports websites, but Nix  
16 refused to provide defendant direct access to the websites until  
17 defendant paid his gambling debt.

18 On July 3, 2019, defendant sent the cashiers' checks to  
19 Individual A via the United Parcel Service ("UPS") and sent a photo  
20 of the UPS shipping label to Agent 1 and Individual B via text  
21 message. Agent 1 forwarded the photo of the UPS label to Nix as  
22 proof that defendant paid his gambling debt.

23 The following day, Nix provided defendant direct access to the  
24 Sand Island Sports websites. Specifically, on July 4, 2019, Nix sent  
25 defendant a text message and assigned defendant player identification  
26 number "R182" and password "yp," and provided defendant the Sand  
27 Island Sports website addresses. Between July 4, 2019, and September  
28

1 29, 2019, defendant placed 899 bets on tennis, football, and  
2 basketball games through the Sand Island Sports websites.

3 On January 27, 2022, defendant was interviewed in the presence  
4 of his attorney by HSI, IRS-CI, and the USAO regarding the Federal  
5 Investigation. At the beginning of the interview, a Special Agent  
6 from HSI admonished defendant that lying to federal law enforcement  
7 agents is a crime, and defendant stated that he understood. During  
8 the interview, defendant made several false statements to the agents  
9 that were material to the investigation. For example, the agents  
10 presented defendant a photo of Agent 1 and asked defendant if he ever  
11 discussed sports gambling with Agent 1. Defendant falsely stated  
12 that he had never discussed sports betting with Agent 1 and that he  
13 knew Agent 1 only from baseball. In fact, as defendant then knew,  
14 defendant discussed sports betting with Agent 1 via telephone and  
15 text messages on hundreds of occasions. In addition, Agent 1 placed  
16 several bets for defendant between May and July 3, 2019, that  
17 resulted in defendant paying \$200,000 to the Nix Gambling Business,  
18 and Agent 1 subsequently assisted defendant obtain an account with  
19 Sand Island Sports and place 899 additional bets on sporting events  
20 through the website between July 4, 2019, and September 29, 2019.

21 The agents also presented defendant with a copy of one of the  
22 cashiers' checks he purchased on June 25, 2019, made payable to  
23 Individual A, and asked defendant why he sent the cashier's check.  
24 Defendant falsely stated that he had placed a bet online with an  
25 unknown person on an unknown website that resulted in a loss of  
26 \$200,000. In fact, as defendant then knew, defendant placed a series  
27 of bets directly through Agent 1 that resulted in the gambling loss.

28



1 Defendant also falsely stated that he did not know the  
2 individual who instructed him to send \$200,000 in cashiers' checks to  
3 Individual A and that he had never communicated with that person via  
4 text message. In fact, as defendant then knew, Agent 1 and  
5 Individual B instructed defendant via text messages to send \$200,000  
6 to Individual A, and defendant had communicated with Agent 1 and  
7 Individual B on hundreds of occasions related to defendant's gambling  
8 with the Nix Gambling Business.

9 On March 14, 2022, defendant sent Individual B an audio message  
10 via WhatsApp regarding his January 2022 interview with HSI and IRS-  
11 CI. During the audio message, defendant told Individual B that he  
12 "[sat] over there and listen [to] what these people said and I no  
13 said nothing, I not talking. I said that I only know [Agent 1] from  
14 baseball."

15 SENTENCING FACTORS

16 10. Defendant understands that in determining defendant's  
17 sentence the Court is required to calculate the applicable Sentencing  
18 Guidelines range and to consider that range, possible departures  
19 under the Sentencing Guidelines, and the other sentencing factors set  
20 forth in 18 U.S.C. § 3553(a). Defendant understands that the  
21 Sentencing Guidelines are advisory only, that defendant cannot have  
22 any expectation of receiving a sentence within the calculated  
23 Sentencing Guidelines range, and that after considering the  
24 Sentencing Guidelines and the other § 3553(a) factors, the Court will  
25 be free to exercise its discretion to impose any sentence it finds  
26 appropriate up to the maximum set by statute for the crime of  
27 conviction.  
28

1 11. Defendant and the USAO agree to the following applicable  
2 Sentencing Guidelines factors:

3 Base Offense Level: 6 USSG § 2B1.1  
4

5 Defendant and the USAO reserve the right to argue that additional  
6 specific offense characteristics, adjustments, and departures under  
7 the Sentencing Guidelines are appropriate.

8 12. Defendant understands that there is no agreement as to  
9 defendant's criminal history or criminal history category.

10 13. Defendant and the USAO reserve the right to argue for a  
11 sentence outside the sentencing range established by the Sentencing  
12 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1),  
13 (a)(2), (a)(3), (a)(6), and (a)(7).

14 WAIVER OF CONSTITUTIONAL RIGHTS

15 14. Defendant understands that by pleading guilty, defendant  
16 gives up the following rights:

- 17 a. The right to persist in a plea of not guilty.  
18 b. The right to a speedy and public trial by jury.  
19 c. The right to be represented by counsel -- and if  
20 necessary have the Court appoint counsel -- at trial. Defendant  
21 understands, however, that, defendant retains the right to be  
22 represented by counsel -- and if necessary have the Court appoint  
23 counsel -- at every other stage of the proceeding.  
24 d. The right to be presumed innocent and to have the  
25 burden of proof placed on the government to prove defendant guilty  
26 beyond a reasonable doubt.  
27 e. The right to confront and cross-examine witnesses  
28 against defendant.

1 f. The right to testify and to present evidence in  
2 opposition to the charges, including the right to compel the  
3 attendance of witnesses to testify.

4 g. The right not to be compelled to testify, and, if  
5 defendant chose not to testify or present evidence, to have that  
6 choice not be used against defendant.

7 h. Any and all rights to pursue any affirmative defenses,  
8 Fourth Amendment or Fifth Amendment claims, and other pretrial  
9 motions that have been filed or could be filed.

10 WAIVER OF APPEAL OF CONVICTION

11 15. Defendant understands that, with the exception of an appeal  
12 based on a claim that defendant's guilty plea was involuntary, by  
13 pleading guilty defendant is waiving and giving up any right to  
14 appeal defendant's conviction on the offense to which defendant is  
15 pleading guilty. Defendant understands that this waiver includes,  
16 but is not limited to, arguments that the statute to which defendant  
17 is pleading guilty is unconstitutional, and any and all claims that  
18 the statement of facts provided herein is insufficient to support  
19 defendant's plea of guilty.

20 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

21 16. Defendant agrees that, provided the Court imposes a term of  
22 imprisonment within or below the range corresponding to an offense  
23 level of four and the criminal history category calculated by the  
24 Court, defendant gives up the right to appeal all of the following:  
25 (a) the procedures and calculations used to determine and impose any  
26 portion of the sentence, with the exception of the Court's  
27 calculation of defendant's criminal history category; (b) the term of  
28 imprisonment imposed by the Court, except to the extent it depends on

1 the Court's calculation of defendant's criminal history category;  
2 (c) the fine imposed by the Court, provided it is within the  
3 statutory maximum; (d) to the extent permitted by law, the  
4 constitutionality or legality of defendant's sentence, provided it is  
5 within the statutory maximum; (e) the term of probation or supervised  
6 release imposed by the Court, provided it is within the statutory  
7 maximum; and (f) any of the following conditions of probation or  
8 supervised release imposed by the Court: the conditions set forth in  
9 Second Amended General Order 20-04 of this Court; the drug testing  
10 conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the  
11 alcohol and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

12 17. Defendant also gives up any right to bring a post-  
13 conviction collateral attack on the conviction or sentence, except a  
14 post-conviction collateral attack based on a claim of ineffective  
15 assistance of counsel, a claim of newly discovered evidence, or an  
16 explicitly retroactive change in the applicable Sentencing  
17 Guidelines, sentencing statutes, or statutes of conviction.  
18 Defendant understands that this waiver includes, but is not limited  
19 to, arguments that the statute to which defendant is pleading guilty  
20 is unconstitutional, and any and all claims that the statement of  
21 facts provided herein is insufficient to support defendant's plea of  
22 guilty.

23 18. The USAO agrees that, provided (a) all portions of the  
24 sentence are at or below the statutory maximum specified above and  
25 (b) the Court imposes a term of imprisonment within or above the  
26 range corresponding to an offense level of four and the criminal  
27 history category calculated by the Court, the USAO gives up its right  
28 to appeal any portion of the sentence.

1                                    RESULT OF WITHDRAWAL OF GUILTY PLEA

2            19. Defendant agrees that if, after entering a guilty plea  
3 pursuant to this agreement, defendant seeks to withdraw and succeeds  
4 in withdrawing defendant's guilty plea on any basis other than a  
5 claim and finding that entry into this plea agreement was  
6 involuntary, then (a) the USAO will be relieved of all of its  
7 obligations under this agreement; and (b) should the USAO choose to  
8 pursue any charge that was either dismissed or not filed as a result  
9 of this agreement, then (i) any applicable statute of limitations  
10 will be tolled between the date of defendant's signing of this  
11 agreement and the filing commencing any such action; and  
12 (ii) defendant waives and gives up all defenses based on the statute  
13 of limitations, any claim of pre-indictment delay, or any speedy  
14 trial claim with respect to any such action, except to the extent  
15 that such defenses existed as of the date of defendant's signing this  
16 agreement.

17                                    EFFECTIVE DATE OF AGREEMENT

18            20. This agreement is effective upon signature and execution of  
19 all required certifications by defendant, defendant's counsel, and an  
20 Assistant United States Attorney.

21                                    BREACH OF AGREEMENT

22            21. Defendant agrees that if defendant, at any time after the  
23 effective date of this agreement, knowingly violates or fails to  
24 perform any of defendant's obligations under this agreement ("a  
25 breach"), the USAO may declare this agreement breached. All of  
26 defendant's obligations are material, a single breach of this  
27 agreement is sufficient for the USAO to declare a breach, and  
28 defendant shall not be deemed to have cured a breach without the

1 express agreement of the USAO in writing. If the USAO declares this  
2 agreement breached, and the Court finds such a breach to have  
3 occurred, then: (a) if defendant has previously entered a guilty plea  
4 pursuant to this agreement, defendant will not be able to withdraw  
5 the guilty plea, and (b) the USAO will be relieved of all its  
6 obligations under this agreement.

7 22. Following the Court's finding of a knowing breach of this  
8 agreement by defendant, should the USAO choose to pursue any charge  
9 that was either dismissed or not filed as a result of this agreement,  
10 then:

11 a. Defendant agrees that any applicable statute of  
12 limitations is tolled between the date of defendant's signing of this  
13 agreement and the filing commencing any such action.

14 b. Defendant waives and gives up all defenses based on  
15 the statute of limitations, any claim of pre-indictment delay, or any  
16 speedy trial claim with respect to any such action, except to the  
17 extent that such defenses existed as of the date of defendant's  
18 signing this agreement.

19 c. Defendant agrees that: (i) any statements made by  
20 defendant, under oath, at the guilty plea hearing (if such a hearing  
21 occurred prior to the breach); (ii) the agreed to factual basis  
22 statement in this agreement; and (iii) any evidence derived from such  
23 statements, shall be admissible against defendant in any such action  
24 against defendant, and defendant waives and gives up any claim under  
25 the United States Constitution, any statute, Rule 410 of the Federal  
26 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal  
27 Procedure, or any other federal rule, that the statements or any  
28

1 evidence derived from the statements should be suppressed or are  
2 inadmissible.

3 COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

4 OFFICE NOT PARTIES

5 23. Defendant understands that the Court and the United States  
6 Probation and Pretrial Services Office are not parties to this  
7 agreement and need not accept any of the USAO's sentencing  
8 recommendations or the parties' agreements to facts or sentencing  
9 factors.

10 24. Defendant understands that both defendant and the USAO are  
11 free to: (a) supplement the facts by supplying relevant information  
12 to the United States Probation and Pretrial Services Office and the  
13 Court, (b) correct any and all factual misstatements relating to the  
14 Court's Sentencing Guidelines calculations and determination of  
15 sentence, and (c) argue on appeal and collateral review that the  
16 Court's Sentencing Guidelines calculations and the sentence it  
17 chooses to impose are not error, although each party agrees to  
18 maintain its view that the calculations in paragraph 11 are  
19 consistent with the facts of this case. While this paragraph permits  
20 both the USAO and defendant to submit full and complete factual  
21 information to the United States Probation and Pretrial Services  
22 Office and the Court, even if that factual information may be viewed  
23 as inconsistent with the facts agreed to in this agreement, this  
24 paragraph does not affect defendant's and the USAO's obligations not  
25 to contest the facts agreed to in this agreement.

26 25. Defendant understands that even if the Court ignores any  
27 sentencing recommendation, finds facts or reaches conclusions  
28 different from those agreed to, and/or imposes any sentence up to the

1 maximum established by statute, defendant cannot, for that reason,  
2 withdraw defendant's guilty plea, and defendant will remain bound to  
3 fulfill all defendant's obligations under this agreement. Defendant  
4 understands that no one -- not the prosecutor, defendant's attorney,  
5 or the Court -- can make a binding prediction or promise regarding  
6 the sentence defendant will receive, except that it will be within  
7 the statutory maximum.

8 NO ADDITIONAL AGREEMENTS

9 26. Defendant understands that, except as set forth herein,  
10 there are no promises, understandings, or agreements between the USAO  
11 and defendant or defendant's attorney, and that no additional  
12 promise, understanding, or agreement may be entered into unless in a  
13 writing signed by all parties or on the record in court.

14 //

15 //

16 //



PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

27. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE  
FOR THE CENTRAL DISTRICT OF  
CALIFORNIA

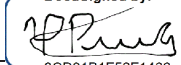
STEPHANIE S. CHRISTENSEN  
Acting United States Attorney

/s/ Jeff Mitchell

August 29, 2022

JEFF MITCHELL  
Assistant United States Attorney


Date

  
8CD01B1F52F1466...  
YASIEL PUIG VALDES

July 7, 2022

Defendant

Date

  
KERI AXEL  
Attorney for Defendant  
Yasiel Puig Valdes

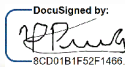
July 7, 2022

Date

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. This agreement has been read to me in Spanish, the language I understand best. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions,

1 and of the consequences of entering into this agreement. No  
 2 promises, inducements, or representations of any kind have been made  
 3 to me other than those contained in this agreement. No one has  
 4 threatened or forced me in any way to enter into this agreement. I  
 5 am satisfied with the representation of my attorney in this matter,  
 6 and I am pleading guilty because I am guilty of the charge and wish  
 7 to take advantage of the promises set forth in this agreement, and  
 8 not for any other reason.

9  DocuSigned by:  
 YASIEL PUIG VALDES  
 9CD01B1F52F14B6

10 YASIEL PUIG VALDES  
 11 Defendant

July 7, 2022

Date

12  
 13  
 14 CERTIFICATION OF INTERPRETER

15 I, Maria del Pilar Fernandez am fluent in the written and spoken  
 16 English and Spanish languages. I accurately translated this entire  
 17 agreement from English into Spanish to defendant PUIG on this date.

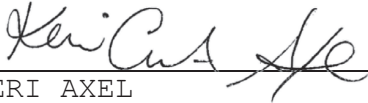
18   
 19 INTERPRETER

08/29/2022  
 Date

20  
 21 CERTIFICATION OF DEFENDANT'S ATTORNEY

22 I am Yasiel Puig Valdes's attorney. I have carefully and  
 23 thoroughly discussed every part of this agreement with my client.  
 24 Further, I have fully advised my client of his rights, of possible  
 25 pretrial motions that might be filed, of possible defenses that might  
 26 be asserted either prior to or at trial, of the sentencing factors  
 27 set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines  
 28 provisions, and of the consequences of entering into this agreement.

1 To my knowledge: no promises, inducements, or representations of any  
2 kind have been made to my client other than those contained in this  
3 agreement; no one has threatened or forced my client in any way to  
4 enter into this agreement; my client's decision to enter into this  
5 agreement is an informed and voluntary one; and the factual basis set  
6 forth in this agreement is sufficient to support my client's entry of  
7 a guilty plea pursuant to this agreement.

8 

9 KERI AXEL  
10 Attorney for Defendant  
11 Yasiel Puig Valdes

July 7, 2022

Date

# EXHIBIT A

## UNITED STATES DISTRICT COURT

## FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

YASIEL PUIG VALDES,

Defendant.

CR No.

I N F O R M A T I O N[18 U.S.C. § 1001(a)(2): Making  
False Statements]

The United States Attorney charges:

[18 U.S.C. § 1001(a)(2)]

A. INTRODUCTORY ALLEGATIONS

At times relevant to this Information:

1. Defendant YASIEL PUIG VALDES was a professional baseball player who played for the Los Angeles Dodgers between 2013 and 2018. The Dodgers traded defendant PUIG to the Cincinnati Reds in December 2018, and the Reds traded defendant PUIG to the Cleveland Indians on July 31, 2019. As of June 2022, defendant PUIG played for the Kiwoom Heroes of the Korean Baseball Organization League, based in South Korea.

2. The Department of Homeland Security, Homeland Security Investigations ("HSI") and the Internal Revenue Service - Criminal

1 Investigation Division ("IRS-CI") in Los Angeles and the United  
2 States Attorney's Office ("USAO") for the Central District of  
3 California were conducting a federal criminal investigation into  
4 federal crimes, including illegal sports gambling and money  
5 laundering (the "Federal Investigation").

6 3. The operation of a sports gambling business in California  
7 was prohibited by 18 U.S.C. § 1955 and California Penal Code § 337a.

8 The Wayne Nix Illegal Sports Gambling Business

9 4. Wayne Nix was a resident of Orange County, California. Nix  
10 was a minor league baseball player from 1995 to 2001.

11 5. Sometime after 2001, Nix began operating an illegal  
12 bookmaking business in the Los Angeles area that accepted and paid  
13 off bets from bettors in California and elsewhere in the United  
14 States based on the outcomes of sporting events at agreed-upon odds  
15 (the "Nix Gambling Business"). Through contacts he had developed  
16 during his own career in professional sports, Nix created a client  
17 list of current and former professional athletes, and others.

18 6. Nix used agents to place and accept bets from others for  
19 the Nix Gambling Business, thus expanding the business.

20 7. Sand Island Sports operated Internet sports gambling  
21 websites, including [www.sandislandsports.com](http://www.sandislandsports.com) and [www.betprestige.com](http://www.betprestige.com)  
22 (hereinafter, the "Sand Island Sports websites"), hosted on servers  
23 primarily located outside the United States. Sand Island Sports also  
24 operated toll-free telephone services (the "call center") to  
25 facilitate sports betting. The Sand Island Sports websites and call  
26 center facilitated unlawful sports gambling by providing a platform  
27 to book makers to track bets placed by their clients.  
28

1           8. Agent 1 was a former collegiate baseball player and a  
2 private baseball coach. Beginning in 2019, Agent 1 worked for the  
3 Nix Gambling Business as an agent. Agent 1 placed and accepted bets  
4 from others and helped Nix maintain the Nix Gambling Business by,  
5 among other things, demanding and collecting money owed to the Nix  
6 Gambling Business by bettors and others.

7           9. As part of the Nix Gambling Business, Nix and Agent 1 used  
8 the Sand Island Sports websites and call center to create accounts  
9 through which wagers would be placed and tracked, and to set credit  
10 limits for bettors.

11          10. Nix provided bettors with account numbers and passwords for  
12 the Sand Island Sports websites and directed the bettors to use the  
13 Sand Island Sports websites to place bets with the Nix Gambling  
14 Business.

15          11. Bettors would place bets online through the Sand Island  
16 Sports websites, and through Nix, Agent 1, and others working at  
17 Nix's direction.

18          12. In January 2019, defendant PUIG met Agent 1 at a youth  
19 baseball camp, and Agent 1 later assisted defendant PUIG in preparing  
20 for the upcoming baseball season.

21          13. Individual A was a client of the Nix Gambling Business who,  
22 in or about June 2019, was owed at least \$200,000 in gambling  
23 winnings from the Nix Gambling Business.

24          14. Individual B was a private baseball coach who assisted  
25 defendant PUIG in placing sports bets with Agent 1 and assisted Agent  
26 1's efforts to collect gambling debts from defendant PUIG.

1                   Defendant PUIG's Use of the Nix Gambling Business

2           15. Beginning no later than May 2019, defendant PUIG began  
3 placing bets on sporting events with the Nix Gambling Business  
4 through Agent 1. By June 17, 2019, defendant PUIG owed the Nix  
5 Gambling Business \$282,900 for sports gambling losses.

6           16. Between June 25, 2019, and July 3, 2019, in a series of  
7 text messages, Agent 1 and Individual B instructed defendant PUIG to  
8 make a check or wire transfer payable to Individual A.

9           17. On June 25, 2019, defendant PUIG withdrew \$200,000 from a  
10 Bank of America financial center in Glendale, California, and  
11 purchased two cashiers' checks for \$100,000 each that were made  
12 payable to Individual A.

13           18. On July 3, 2019, defendant PUIG sent the cashiers' checks  
14 to Individual A via the United Parcel Service ("UPS") and sent a  
15 photo of the UPS shipping label to Agent 1 and Individual B via text  
16 message.

17           19. On July 4, 2019, via text message, Nix provided defendant  
18 PUIG direct access to the Sand Island Sports websites, assigned  
19 defendant PUIG player identification number "R182" and password "yp,"  
20 and provided defendant PUIG the Sand Island Sports website addresses.

21           20. Between July 4, 2019, and September 29, 2019, defendant  
22 PUIG placed 899 bets on sporting events through the Nix Gambling  
23 Business, Agent 1, and Sand Island Sports.

24                   Investigation into Wayne Nix and Agent 1

25           21. On January 27, 2022, defendant PUIG was interviewed in the  
26 presence of his attorney by HSI, IRS-CI, and the USAO regarding the  
27 Federal Investigation, including the cashiers' checks defendant PUIG  
28



1 sent to Individual A. Defendant PUIG, through his counsel, requested  
2 that HSI not record the interview.

3 22. At the beginning of the interview, a Special Agent from HSI  
4 admonished defendant PUIG that lying to federal law enforcement  
5 agents is a crime, and defendant PUIG stated that he understood.

6 B. FALSE STATEMENTS

7 23. On or about January 27, 2022, in Los Angeles County, within  
8 the Central District of California, and affecting the Federal  
9 Investigation in the Central District of California, and in a matter  
10 within the jurisdiction of the executive branch of the government of  
11 the United States, namely, HSI, IRS-CI, and the USAO, defendant PUIG  
12 knowingly and willfully made materially false statements and  
13 representations to HSI, IRS-CI, and the USAO knowing that these  
14 statements and representations were untrue:

15 a. Defendant PUIG falsely stated that he had never  
16 discussed sports betting with Agent 1. In fact, as defendant PUIG  
17 then knew, defendant PUIG discussed sports betting with Agent 1 via  
18 telephone and text messages on numerous occasions, and Agent 1  
19 assisted defendant PUIG in placing at least 899 bets on sporting  
20 events between in or about May 2019 and on or about September 29,  
21 2019.

22 b. Defendant PUIG falsely stated that he had placed a bet  
23 online with an unknown person on an unknown website which resulted in  
24 a loss of \$200,000. In fact, as defendant PUIG then knew, defendant  
25 PUIG placed a series of bets directly through Agent 1 that resulted  
26 in the gambling loss, and not through a website.

27 c. Defendant PUIG falsely stated that he did not know the  
28 individual who instructed him to send \$200,000 in cashiers' checks to

1 Individual A and that he had never communicated with that person via  
2 text message. In fact, as defendant PUIG then knew, Agent 1 and  
3 Individual B, who defendant PUIG knew, instructed defendant PUIG via  
4 text messages to send \$200,000 to Individual A, and defendant PUIG  
5 had communicated with Agent 1 and Individual B on multiple occasions.

6  
7 TRACY L. WILKISON  
8 United States Attorney  
9

10 SCOTT M. GARRINGER  
11 Assistant United States Attorney  
12 Chief, Criminal Division

13 KRISTEN A. WILLIAMS  
14 Assistant United States Attorney  
15 Acting Chief, Major Frauds Section

16 ALEXANDER B. SCHWAB  
17 Assistant United States Attorney  
18 Deputy Chief, Major Frauds Section

19 JEFF MITCHELL  
20 Assistant United States Attorney  
21 Major Frauds Section

22 DANIEL BOYLE  
23 Assistant United States Attorney  
24 Asset Forfeiture & Recovery  
25 Section  
26  
27  
28

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daniel.boyle2@usdoj.gov

10 Attorneys for Plaintiff  
11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 YASIEL PUIG VALDES,

18 Defendant.  
19

No. CR 22-394-DMG

GOVERNMENT'S MOTION FOR BREACH OF  
PLEA AGREEMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES

20  
21 Plaintiff United States of America, by and through its counsel  
22 of record, the United States Attorney for the Central District of  
23 California and Assistant United States Attorneys Jeff Mitchell and  
24 Daniel Boyle, hereby moves for a Court finding that defendant YASIEL  
25 PUIG VALDES breached the terms of his plea agreement.

26 //

27 //  
28

Case 2:22-cr-00394-DMG Document 33 Filed 12/14/22 Page 2 of 5 Page ID #:124

1        This motion is based upon the attached memorandum of points and  
2 authorities, the attached exhibits, the files and records in this  
3 case, and such further evidence and argument as the Court may permit.

4        Dated: December 14, 2022

Respectfully submitted,

5                                E. MARTIN ESTRADA  
6                                United States Attorney

7                                SCOTT M. GARRINGER  
8                                Assistant United States Attorney  
9                                Chief, Criminal Division

10                                          /s/ Jeff Mitchell          

JEFF MITCHELL

DANIEL BOYLE

Assistant United States Attorney

11                                Attorneys for Plaintiff  
12                                UNITED STATES OF AMERICA  
13  
14  
15  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. PROCEDURAL BACKGROUND**

3 On August 29, 2022, the government filed plea agreement for  
4 defendant YASIEL PUIG VALDES ("defendant"). The plea agreement  
5 required defendant to plead guilty. In exchange for his guilty plea,  
6 the government agreed not to prosecute defendant for the more serious  
7 offense of Obstruction of Justice.

8 Defendant appeared for his guilty plea on November 23, 2022, but  
9 refused to plead guilty. The government hereby seeks to be relieved  
10 of its contractual obligations.

11 **II. ARGUMENT**

12 The Ninth Circuit Court of Appeals has determined that "[p]lea  
13 agreements are contractual in nature and are measured by contract law  
14 standards." United States v. De la Fuente, 8 F.3d 1333, 1337 (9th  
15 Cir. 1993) (internal citation omitted).

16 "When the government seeks to revoke a plea agreement, it must  
17 demonstrate to the trial court that the defendant has not fulfilled  
18 his promises." United States v. Gonzalez Sanchez, 825 F.2d 572, 578  
19 (1st Cir. 1987). The government has the burden of proving a breach  
20 of the plea agreement by a preponderance of the evidence. See United  
21 States v. Packwood, 848 F.2d 1009, 1011 (9th Cir. 1988); accord  
22 United States v. Tilley, 964 F.2d 66, 71 (1st Cir. 1992); United  
23 States v. Verrusio, 803 F.2d 885, 894 (7th Cir. 1986).

24 **A. Defendant Breached His Plea Agreement by Refusing to Plead**  
25 **Guilty**

26 The plea agreement required defendant to plead guilty. (Dkt.  
27 No. 6, Plea Agreement ¶ 2(a).) In exchange for his guilty plea, the  
28 government agreed not to prosecute defendant for the more serious

1 offense of Obstruction of Justice, in violation of 18 U.S.C. § 1503,  
2 arising out of defendant's conduct described in the factual basis of  
3 the plea agreement. (Id. ¶ 3(d).)

4 Defendant appeared for his guilty plea on November 23, 2022, but  
5 refused to plead guilty. (Dkt. No. 24.) At defense counsel's  
6 request, both the Court and the government gave defendant a second  
7 opportunity to plead guilty on November 29, 2022, but defendant again  
8 refused to plead guilty. (Dkt. No. 26.) In addition, defendant has  
9 stipulated that he longer intends to plead guilty in this matter and  
10 has requested a trial date. (Id.)

11 **B. The Remedy for Defendants' Breach of the Plea Agreement Is**  
12 **to Relieve the Government of Its Obligations Under the**  
**Agreement**

13 When a defendant is found to have breached a plea agreement, the  
14 appropriate remedy is to relieve the government of its obligations  
15 under the agreement. See Gonzalez-Sanchez, 825 F.2d at 578 ("the  
16 failure of the defendant to fulfill his promise to cooperate and  
17 testify fully and honestly releases the government from the plea  
18 agreement," and the government was entitled to "indict and try the  
19 defendant regardless of whatever it may have promised earlier");  
20 United States v. Sandoval-Lopez, 122 F.3d 797, 800 (9th Cir. 1997)  
21 ("Where a defendant has breached a plea agreement, courts have found  
22 the government to be free from its obligations."). As the Ninth  
23 Circuit succinctly stated in Sandoval-Lopez:

24 Plea bargains are contractual in nature and subject to  
25 contract-law standards. Just as with other forms of  
26 contracts, a negotiated guilty plea is a "bargained-for  
27 quid pro quo." Thus, either party can be said to 'breach'  
28 a plea bargain if it fails to live up to the promises it  
made under the terms of the agreement. Where a defendant  
has breached a plea agreement courts have found the  
government to be free from its obligations.

1 122 F.3d. at 800 (internal citations omitted).

2 In this case, the plea agreement signed by defendant, with  
3 advice of counsel, explicitly state that violating any of its  
4 provisions will constitute a breach:

5 Defendant agrees that if defendant, at any time after the  
6 effective date of this agreement, knowingly violates or  
7 fails to perform any of defendant's obligations under this  
8 agreement ("a breach"), the USAO may declare this agreement  
9 breached. All of defendant's obligations are material, a  
10 single breach of this agreement is sufficient for the USAO  
11 to declare a breach, and defendant shall not be deemed to  
12 have cured a breach without the express agreement of the  
13 USAO in writing. If the USAO declares this agreement  
14 breached, and the Court finds such a breach to have  
15 occurred, then: (a) if defendant has previously entered a  
16 guilty plea pursuant to this agreement, defendant will not  
17 be able to withdraw the guilty plea, and (b) the USAO will  
18 be relieved of all its obligations under this agreement.

19 (Plea Agreement ¶ 21.)

20 As a consequence, in the event of a breach, the government is no  
21 longer bound by its agreements. (Id.) For all of these reasons, the  
22 Court should find defendant in breach of his plea agreement.

### 23 **III. CONCLUSION**

24 The government requests that the Court make a finding that  
25 defendant breached his plea agreement. Pursuant to the above terms,  
26 such a finding will relieve the government of its obligations under  
27 the plea agreement.  
28

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8 Telephone: (424) 652-7800

9 Facsimile: (424) 652-7850

10 Attorneys for Defendant

11 Yasiel Puig Valdes

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 YASIEL PUIG VALDES,

18 Defendant.

Case No.: 2:22-cr-00394-DMG

**DEFENDANT'S OPPOSITION TO  
GOVERNMENT'S MOTION FOR  
BREACH OF PLEA AGREEMENT**



1 Defendant Yasiel Puig Valdes (“Defendant Puig” or “Puig”), through his  
2 counsel Waymaker LLP, respectfully submits his Opposition to the government’s  
3 Motion for Breach of Plea Agreement (“Mot.” (Dkt. 33)), filed December 14, 2022.

4 The government’s Motion presents no issue that the Court should reach at this  
5 time. A plea agreement is a contract, to which the Court is not a party. Like any  
6 other party to a contract, to merit the Court’s intervention, the government must  
7 prove the elements of a breach of contract – which include damages – or  
8 demonstrate the need for an injunctive remedy that would satisfy the elements  
9 necessary for declaratory relief. The government has done neither. The  
10 government’s motion is premature and unnecessary, and the Court should decline to  
11 take any action at this time.

12 **I. FACTUAL AND PROCEDURAL BACKGROUND**

13 The government issued a grand jury subpoena to defendant Puig on December  
14 14, 2021, seeking testimony on February 16, 2022. Given his commitment to play  
15 baseball in the Republic of Korea in summer 2022, and his need to leave for Korea  
16 in February, Puig’s counsel requested that Puig be permitted to sit for an interview  
17 in lieu of grand jury testimony, and the government agreed.

18 The interview took place by video conference on January 27, 2022; Puig was  
19 at a hotel and had just returned from a workout. The only person in the room with  
20 Puig was a civil attorney who had assisted him in a prior civil matter; the rest of the  
21 participants on the interview, including the interpreter, were in different locations on  
22 Zoom. Puig did not have his own interpreter, and the attorney who was with him  
23 did not speak Spanish.

24 Prior to the interview, the prosecutors did not tell Puig’s attorney what the  
25 interview would be about, other than that it would be about online gambling.  
26 Although it is common to request records from a witness to jog memory and  
27 because records are often the best evidence—particularly when historical  
28 communications are at issue—the government did not request any records from

1 Puig. He therefore had no preparation or context to evaluate the government's  
2 questions, although they were asking about communications that took place more  
3 than 2 years before the interview. As Puig attempted to refresh his own recollection  
4 during the interview using messages on his own device, the government terminated  
5 the interview.

6 After the interview, the government did not contact Puig's attorney, did not  
7 indicate that the government had any issues with the interview, never requested any  
8 messages or documents from Puig, and never requested a follow up interview.

9 On May 9, 2022, the government issued a target letter to Puig, indicating he  
10 was a target of a criminal investigation regarding possible false statements and  
11 obstruction of justice. The undersigned criminal counsel from Waymaker LLP were  
12 retained on or about May 25, 2022. Counsel were told that the government had no  
13 interest in talking with Puig again and were prepared to indict him.

14 On June 6, 2022, the government met with Puig and his counsel via Zoom  
15 and made a presentation of the evidence and the charges it intended to bring. Puig  
16 was in Korea. The prosecutors told counsel and Puig that the government was  
17 intending to indict him imminently with false statements and obstruction charges,  
18 and already had authority to proceed with those charges. They further stated that, if  
19 indicted, the government would seek an arrest warrant which would go into Interpol;  
20 this would trigger Puig's arrest abroad. Puig was given two days, until June 8,  
21 2022, to let the government know if he was interested in a pre-indictment  
22 disposition. Defense counsel responded to the government on June 8 and requested  
23 that the government issue a plea offer to the false statements charge only, and, on  
24 June 16, 2022, the government issued a plea agreement that would have Puig plead  
25 guilty to a charge of Making False Statements in violation of 18 U.S.C. §  
26 1001(a)(2).

27 After some discussion between counsel concerning the potential factual basis  
28 and other issues, the government made some edits and reissued the plea agreement

1 on June 27, 2022, and then again on July 6, 2022, with a July 8, 2022 deadline. Puig  
2 signed on July 7, 2022. The government signed and filed the plea agreement on  
3 August 29, 2022. (*See* Dkt. 6.)

4 After finishing his baseball season, Puig returned from Korea on November  
5 13, 2022. On November 15, Puig appeared in this Court for an initial appearance  
6 and arraignment. He waived his right to an indictment and preliminary hearing; and  
7 a change of plea proceeding was promptly scheduled for November 23, 2022.

8 On that date, Puig appeared with counsel and requested additional time to  
9 explore a factual innocence defense. Counsel for Puig informed this Court about the  
10 procedural history of Mr. Puig's charges, the urgency required by the government's  
11 plea agreement in light of Puig's ongoing baseball season and potential international  
12 arrest, and the facts that counsel had reviewed and developed with Puig since he  
13 returned from Korea and was able to meet with counsel in person. Specifically,  
14 counsel informed this Court that, in preparation for the change of plea hearing,  
15 counsel and Puig found evidence suggesting that other individuals had sought to  
16 induce him to collude or obstruct the government's investigation but Puig had  
17 repeatedly refused – at a minimum contradicting the government's obstruction  
18 allegations. Prior to the hearing, defense counsel had requested and reviewed  
19 interview reports that corroborated some of Puig's statements, casting doubt on the  
20 government's prosecution theory.

21 Accordingly, counsel requested various additional discovery items from the  
22 government to explore Puig's factual defenses with him, as the Court would have  
23 required that counsel affirm that they had done under Fed. R. Crim. P. 11. The  
24 Court granted a short continuance of the change-of-plea hearing until November 29,  
25 2022, and ordered the parties to meet and confer regarding the requested discovery.

26 The government subsequently provided some of the items requested, and the  
27 defense team finally had time in person with Puig to review those items and to  
28 evaluate the context of events with Puig.

1 On November 28, 2022, counsel informed the government that, after  
2 reviewing the materials and further exploring the facts with Puig, he did not intend  
3 to enter a guilty plea, and counsel together informed this Court, who took the  
4 hearing off calendar.

## 5 **II. DISCUSSION**

6 The government's motion for breach of the plea agreement fails because:  
7 (1) the government cannot meet the elements of a contractual breach without any  
8 damages; and (2) any request for declaratory relief is not actionable or ripe for  
9 adjudication. The defense also respectfully notes that the government has not asked  
10 this Court to find a "knowing breach" as required by paragraph 22 of the plea  
11 agreement and the defense believes that issue – if the government wishes to raise it  
12 – should not be addressed until pretrial motions; the defense needs the benefit of  
13 discovery to determine whether to challenge the specific enforcement of that  
14 paragraph.

### 15 **A. The Government Has Suffered No Damages to Satisfy the Elements** 16 **of a Breach of Contract Claim**

17 Based on the fact that defendant Puig has decided not to enter a guilty plea,  
18 the government has filed a motion for breach, asking this Court for the remedy of  
19 being "released from its obligations" under the plea agreement. (*See* Mot. at 3.) As  
20 the government recognizes (*id.* at 1) plea agreement is a contract – contractual  
21 principles therefore apply. *See United States v. Plascencia-Orozco*, 852 F.3d 910,  
22 919 (9th Cir. 2017) ("Because 'plea agreements are contractual in nature' we  
23 measure them by 'contract law standards.'") (Citations omitted). Thus, the  
24 government asks the Court to find a breach of contract, but the elements of a  
25 contractual breach are clearly not met.

26 Breach of contract requires: "(1) the existence of the contract, (2) plaintiff's  
27 performance or excuse for nonperformance, (3) defendant's breach, and (4) the  
28

1 resulting damages to the plaintiff.” *Anheuser-Busch, LLC v. State Farm Mut. Auto.*  
2 *Ins. Co.*, 2020 WL 6205705 \*7 (C.D. Cal. Sept. 11, 2020).

3 Here, the government cannot satisfy the elements of breach of contract  
4 because it has no damages. *See Global Hawk Ins. Co. v. Wesco Ins. Co.*, 424 F.  
5 Supp. 3d 848, 854 (C.D. Cal. 2019) (“A claim for breach of contract ‘is not  
6 actionable without damage.’”) Indeed, Puig both waived indictment and appeared  
7 voluntarily (from a foreign country) pursuant to a summons in this case, all of which  
8 to-date has saved the government resources over the alternative of an indictment,  
9 warrant, and foreign arrest. These shortcomings (and the government’s failure to  
10 identify any possible damages in its motion), make clear that the government  
11 “cannot sustain a claim for breach of contract because [the government] did not  
12 suffer any cognizable harm caused by [Puig].” *Global Hawk*, 424 F. Supp. 3d at  
13 861.

14 **B. The Government’s Requested Relief Is Unspecified, Overbroad,**  
15 **and Not Ripe**

16 When evaluated under appropriate principles of contract law, it appears that  
17 what the government really seeks is declaratory relief, in the form of a declaration  
18 from this Court that the government may be relieved of its contractual obligations.  
19 But declaratory relief is not ripe for determination. The rationale for avoiding the  
20 premature adjudication for declaratory relief “is to prevent courts from entangling  
21 themselves in abstract disagreements.” *In re Real Estate Assoc. Ltd., P’ship Litig.*,  
22 223 F. Supp. 2d 1109, 1138 (C.D. Cal. 2002). “In order for an issue to be ripe for  
23 determination, two conditions must be satisfied: (1) the dispute must be sufficiently  
24 concrete to make declaratory relief appropriate (citations omitted); and (2) if a court  
25 declines to consider the issues, the parties will suffer hardship.” *Id.*

26 Here, the request is not ripe for determination because it is not sufficiently  
27 concrete to make declaratory relief appropriate. Indeed, the government has  
28 requested that the Court “relieve it from its obligations” under the plea agreement

1 without specifying exactly the obligation(s) of which it seeks to be relieved. This  
2 alone makes its motion premature and unsupported. Similarly, there is no hardship  
3 that will be suffered if the Court declines to consider the issues at this point in the  
4 litigation. Indeed, while the government does not specify the obligation(s) of which  
5 it seeks to be relieved, it references that one of its obligations was not to charge  
6 defendant with a violation of 18 U.S.C. § 1503, Obstruction of Justice. (Mot. at 2-  
7 3.) But nothing is stopping the government from proceeding with the case, using the  
8 regular tools at its disposal to seek an indictment, should it wish to do so.

9 Accordingly, the government cannot show a concrete need for the Court's  
10 intervention, nor will it suffer any hardship without it. If the government wishes to  
11 supersede the information, it has the power to convene a grand jury, present  
12 evidence, and cause an indictment to be returned. *See* Fed. R. Crim. P. 6(a)(1).  
13 There is no legal or practical impediment to the government taking these actions.

14 By contrast, this is not the situation – often present in breach of plea  
15 agreement cases – where the defendant has entered a guilty plea such that the  
16 government needs to seek the specific relief of vacating the guilty plea that the  
17 Court has accepted pursuant to Rule 11. *See, e.g., U.S. v. Aguila-Muniz*, 156 F.3d  
18 974, 978 (9th Cir. 1998) (“After a plea agreement has been accepted and entered by  
19 the court, the court may not rescind the plea agreement on the government’s motion  
20 unless the defendant has breached the agreement.”). Here, there is no comparable  
21 need for any specific form of relief, so the motion should be denied.

22 If the government were to seek a superseding indictment, defendant Puig  
23 would possibly have a breach motion because he would have damages. The Ninth  
24 Circuit has endorsed the procedure that a defendant may challenge an indictment for  
25 breach of a plea agreement. *See Plascencia-Orozco*, 852 F.3d at 920 (“If the  
26 government indicts a defendant on charges that the defendant believes are barred by  
27 a preexisting plea agreement, the defendant may move to dismiss those charges.”)  
28 Like any party to a contract, however, Puig might or might not decide to assert such



1 breach, in which case the Court might never be asked to intervene. Judicial  
2 economy favors waiting until the point at which there is a justiciable controversy  
3 and a need for judicial intervention, and this is not that point.

4 The government's belief that the Court needs to do something to "relieve it  
5 from its contractual obligations" apparently arises from superfluous language in the  
6 plea agreement stating that its obligations will be relieved "[i]f the USAO declares  
7 this agreement breached, and the Court finds such a breach to have occurred." (*See*  
8 *Plea Agreement* (Dkt. 6) at ¶ 21). But the government drafted this language and  
9 includes it in all plea agreements in this district. The Court did not draft the  
10 language, nor is it found in any statute or rule. The government cannot use  
11 contracting language to assign the Court a task, where the law does not provide a  
12 basis for the Court's involvement. *See supra, Real Estate Assoc. Ltd.*, 223 F. Supp.  
13 2d at 1138.

14 **C. The Government Has Not Requested that the Court Find a**  
15 **Knowing Breach and the Defense Requests that Any Discussion of**  
16 **that Issue Be Deferred Until the Pretrial Motion Stage**

17 Finally, it is important to note that the government requested only that the  
18 Court find a breach under paragraph 21 of the plea agreement, rather than a  
19 "knowing breach" of the plea agreement under paragraph 22, and did not ask this  
20 Court to invoke any of the potential waivers in the subparagraphs of paragraph 22.  
21 Out of an abundance of caution, however, and because the government did not  
22 identify with precision the relief it seeks, the defense wishes to be clear that it does  
23 not believe paragraph 22 is implicated by the government's Motion and, in any  
24 event, it would respectfully request that any adjudication of that issue be deferred to  
25 the pre-trial motion stage of this case.

26 Paragraph 22 of the plea agreement provides, among other things, that if the  
27 Court finds a "knowing breach" of the plea agreement, the Court may permit the  
28 Factual Basis to be admitted at trial. The defense submits that this is more

1 appropriately a pre-trial issue, and also submits that Puig and his team need to  
2 review all of the discovery before it can respond to whether a “knowing breach” has  
3 occurred. Puig may also ask the Court to exclude the statement on other evidentiary  
4 bases.

5 As the defense has informed the Court, the circumstances defendant was  
6 under in deciding whether to enter a plea agreement with the government were  
7 difficult, at best. After retaining criminal counsel on May 25, 2022, the government  
8 met (over Zoom) with counsel and defendant concerning the government’s view of  
9 the evidence and his options on June 6, 2022, with a short deadline to indicate his  
10 willingness to discuss a plea, and a plea agreement was issued eight days after that.  
11 As defendant Puig was weighing his options, he was also enduring a grinding work  
12 schedule half-way across the world in Korea. For a charge that did not present a  
13 danger to anyone, and presented no statute of limitations issues, it is not clear why  
14 there was a need for haste, but the government clearly was in a hurry.

15 This presented the defendant with a Hobson’s choice: agree to a plea  
16 agreement or face a mid-season arrest and extradition, ruining his season and  
17 interfering with his only source of gainful employment. The impossibility of this  
18 choice was compounded by the fact that defendant had new counsel, was 17-hours  
19 away in a different time zone, has a third-grade education, ADHD, and needed a  
20 Cuban translator to understand the government’s complex plea agreement and  
21 alleged Factual Basis.

22 Given these circumstances, the defense may seek rescission of the plea  
23 agreement, or at least may ask the Court not to grant the government specific  
24 enforcement of paragraph 22, asserting contractual defenses such as  
25 unconscionability, public policy, undue influence, nondisclosure, or mistake. *See,*  
26 *e.g., Pokorny v. Quixtar, Inc.*, 601 F.3d 987, 996 (9th Cir. 2010) (“An agreement or  
27 any portion thereof is procedurally unconscionable if ‘the weaker party is presented  
28 the clause and told to ‘take it or leave it’ without the opportunity for meaningful



1 negotiation.” (citing *Szetela v. Discover Bank*, 97 Cal.App.4th 1094 (2002)). But  
 2 the defense needs a full review of the relevant discovery to evaluate these defenses,  
 3 and may need an expert report attesting to Puig’s ADHD and limited education. For  
 4 these reasons, the defense requests that these decisions be deferred until the pretrial  
 5 period.

6 In addition, the defense may ask the Court to exclude the statement under  
 7 general evidence standards such as Fed. R. Evid. 403, which would require the  
 8 Court to determine the admissibility of the statement in the context of other trial  
 9 evidence. These would be appropriate questions to evaluate in pre-trial motions.

10 For these reasons, the defense respectfully requests that any determination  
 11 whether there was a “knowing breach” be addressed, if at all, in pre-trial motions.

#### 12 **D. The Motion Should be Denied Pursuant to Local Rule 7-3**

13 As a final matter, the government’s motion should be denied for failure to meet  
 14 and confer in violation of Local Rule 7-3. The Central District of California’s local  
 15 rules require that seven days before moving for relief, “counsel contemplating the  
 16 filing of any motion must first contact opposing counsel to discuss thoroughly,  
 17 preferably in person, the substance of the contemplated motion and any potential  
 18 resolution.” C.D. Cal. Local Rule 7-3.<sup>1</sup> District courts have discretion to refuse to  
 19 consider a motion that fails to comply with these requirements. *See Alcatel-Lucent*  
 20 *USA, Inc. v. Dugdale Commc’ns, Inc.*, 2009 WL 3346784, at \*4 (C.D. Cal. Oct. 13,  
 21 2009) (Denying motion and stating “[t]he meet and confer requirements of Local  
 22 Rule 7-3 are in place for a reason . . . nothing short of strict compliance with the local  
 23 rules” is expected.); *See also Purdue v. CBC Rest. Corp.*, 2019 WL 7166979, at \*1-2

24  
 25  
 26 <sup>1</sup> If no resolution is reached, Local Rule 7-3 also requires that “counsel for the  
 27 moving party [] include in the notice of motion a statement to the following effect:  
 28 ‘This motion is made following the conference of counsel pursuant to L.R. 7-3  
 which took place on (date).’”

(C.D. Cal. Nov. 9, 2019) (denying motion on the basis that it failed to comply with Local Rule 7-3, and disregarded explanations for the failure offered on reply.)

Here, the government has failed to meet and confer in violation of the local rules and failed to include the required language in its notice of motion that “[t]his motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on (date).” (*See* Dkts. 33, 36.) As in *Purdue*, anything the government could say on reply to explain this fatal deficiency (and Puig is aware of no such thing) should be disregarded. The meet and confer requirement encourages parties to informally resolve disputes and preserve valuable judicial resources. The government has entirely bypassed this rule—and professional courtesy—by filing the motion with no notice whatsoever, and the issues raised by Puig in this response could have obviated the need for the instant motion practice. *See Purdue*, 2019 WL 7166979, at \*2 (there are “numerous conflicts manifest in the parties’ briefing [which] make clear that many of the parties’ disputes were suitable for exactly the type of extensive meet and confer mandated by Local Rule 7-3 before the parties’ sought the Court’s intervention on each of these issues.”).

The defense further notes that this is the second time that government counsel has simply disregarded the Local Rules (*see* Dkt. 35) and it should have to at least attempt to follow the rules in good faith like everyone else.

The Motion should be denied on this basis alone.

### III. CONCLUSION

For the foregoing reasons, Puig respectfully requests that this Court deny the Government’s Motion for Breach.

DATED: December 28, 2022 WAYMAKER LLP

By: /s/ Keri Curtis Axel  
KERI CURTIS AXEL  
*Attorneys for Defendant Yasiel Puig Valdes*

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 11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 YASIEL PUIG VALDES,

18 Defendant.  
 19

No. CR 22-394-DMG

GOVERNMENT'S REPLY TO DEFENDANT'S  
OPPOSITION TO MOTION FOR BREACH;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION; EXHIBITS

20  
 21 Plaintiff United States of America, by and through its counsel  
 22 of record, the United States Attorney for the Central District of  
 23 California and Assistant United States Attorneys Jeff Mitchell and  
 24 Daniel Boyle, hereby files its reply to defendant's opposition to  
 25 plaintiff's motion for breach. (Dkt. No. 45.)

26 //

27 //

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1 This reply is based upon the attached memorandum of points and  
2 authorities, the declaration and exhibits,<sup>1</sup> the files and records in  
3 this case, and such further evidence and argument as the Court may  
4 permit.

5 Dated: January 4, 2022

Respectfully submitted,

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10 /s/ Jeff Mitchell

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<sup>1</sup> The declaration and exhibits will be lodged separately under seal.

1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**

2        **I.        INTRODUCTION**

3            On December 29, 2022, defendant filed an opposition to the  
4 government's motion to find him in breach of his plea agreement (the  
5 "Opposition"). Defendant appears to concede that the government  
6 should be able to charge him with Obstruction of Justice, but argues  
7 that the plea agreement does not prohibit the government from seeking  
8 an indictment now, even though it expressly provides otherwise.

9            Defendant also unnecessarily describes the January 27<sup>th</sup> interview  
10 and plea negotiation process; however, defendant's description omits  
11 key facts and is thus misleading on several points. The government  
12 briefly provides a more complete factual background below.

13        **II.       FACTUAL BACKGROUND**

14            After several months of negotiating, defendant, through his  
15 former counsel, agreed to participate in a voluntarily interview on  
16 January 27, 2022, at 1:30 p.m. After the government advised counsel  
17 of the nature of its investigation, counsel indicated that his client  
18 was unlikely to have information relevant to the investigation, but  
19 nonetheless requested an immunity letter to protect defendant from  
20 any incriminating statements. (Exhibit A.) The government agreed.  
21 The government also advised counsel that defendant was not a target  
22 of the investigation. (Declaration ¶ 2.)

23            In his opposition, and in statements made to the government and  
24 to the media,<sup>1</sup> defendant has suggested that he was not adequately  
25 prepared for the interview because his attorneys practiced civil, not  
26

27 \_\_\_\_\_  
28            <sup>1</sup> <https://www.latimes.com/california/story/2022-11-23/yasiel-puig-plea-hearing-delayed-attorneys-explore-possible-defense>

1 criminal, law and he did not have his own interpreter. (Opposition  
2 at 1.) These claims are misleading.

3 Defendant's attorney at that time was a former Federal criminal  
4 prosecutor from the Southern District of California. (Declaration  
5 ¶ 3.) Further, defendant's then-counsel advised the government that  
6 even though defendant speaks and understands some English, counsel  
7 recommended the government retain a professional Spanish-language  
8 interpreter, and in particular, one of Cuban descent to avoid any  
9 misunderstandings due to the dialect. (Id. ¶ 6.) The government  
10 agreed, and retained an independent court-certified Spanish language  
11 interpreter of Cuban descent for the interview. (Id.)

12 On January 27, 2022, the government participated in a Webex  
13 video conference with defendant, his two defense attorneys, and an  
14 independent court-certified Spanish language interpreter of Cuban  
15 descent. (Exhibit B.) The Webex conference began on time at 1:30  
16 p.m., however, defendant was approximately 30 minutes late. After he  
17 arrived, defendant was given time to speak to both of his attorneys  
18 and the interpreter outside the presence of the government. At the  
19 beginning of the interview, defendant's attorneys requested that the  
20 interview not be recorded. (Exhibit B.) The government agreed. The  
21 government then discussed the immunity letter, and the case agent  
22 began to admonish defendant that any false statements could result in  
23 a criminal prosecution; however, defendant interrupted the agent and  
24 asked why the government was wasting his time. (Id.) The agent  
25 nonetheless finished the admonishment. (Id.)

26 For the next hour and a half, the government attempted to  
27 interview defendant about his knowledge of the Wayne Nix Sports  
28 Gambling Organization. The government showed defendant photos of the

1 Sand Island Sports conspirators, copies of the cashier's checks  
2 defendant purchased to pay his gambling losses with Sand Island  
3 Sports, screen capture images of the Sand Island Sports Website that  
4 defendant used to place bets, and even a screen capture image that  
5 defendant had taken of his own cell phone and sent to the individual  
6 described in the Information as Agent 1. (Id.) Defendant, however,  
7 denied all knowledge of the organization and its conspirators, except  
8 for Agent 1 who he stated that he knew only from baseball. Towards  
9 the end of the interview, defendant indicated that Agent 1 had just  
10 sent him a text message, and defendant then began to review his prior  
11 text messages with Agent 1. (Id.)

12 In the Opposition, defendant states that the government  
13 terminated the interview while defendant was still refreshing his  
14 memory with the older text messages from Agent 1. (Opposition at 2.)  
15 The government disagrees. Defendant indicated that he found text  
16 messages with Agent 1 as far back as May 2019 but indicated that  
17 there were no discussions related to unlawful sports gambling.  
18 (Exhibit B.) The government then asked a few additional questions  
19 and eventually ended the interview at 3:41 p.m. (Id.)

20 In the Opposition, defendant also states that the government did  
21 not contact defendant's prior counsel after the interview and did not  
22 indicate there were any issues with the proffer. (Opposition at 2.)  
23 The government again disagrees. Multiple times during the interview,  
24 the government allowed defendant, his attorneys, and the interpreter  
25 to speak outside the presence of the government. (Exhibit B.)  
26 During the final break during the interview, government counsel  
27 privately advised defendant's then-counsel that defendant's  
28 statements were contrary to the evidence obtained during the

1 investigation. (Id. at 3; Declaration ¶ 9.) Counsel then conferred  
2 with his client, but defendant's recollection did not change after  
3 the break. Immediately after the interview, the government again  
4 spoke to counsel privately and advised him that the government  
5 believed defendant had provided false statements during the interview  
6 and that the government would discuss internally whether to seek an  
7 indictment. (Declaration ¶ 10.)

8 Ultimately, an indictment of defendant was approved and signed  
9 by the Chief of the Criminal Division on May 25, 2022. (Declaration  
10 ¶ 11.) That same day, the government was contacted by defendant's  
11 new counsel, Keri Curtis Axel. (Id.) The government advised counsel  
12 that it was prepared to seek an indictment against defendant alleging  
13 Obstruction of Justice and False Statements, but counsel requested  
14 that the government delay seeking an indictment and instead attempt  
15 to resolve the case pre-indictment. (Id.) Counsel indicated that a  
16 pre-indictment resolution would be preferable to defendant because it  
17 would minimize the amount of negative publicity. (Id.) Two days  
18 later, before counsel had reviewed any of the evidence, defense  
19 counsel advised the government via email that she had "authority to  
20 move forward to engage in plea discussions," and requested a reverse  
21 proffer to review the evidence. (Exhibit C.) The government agreed.

22 On June 6, 2022, the government conducted a reverse proffer and  
23 showed defendant and his counsel a 79-slide PowerPoint presentation  
24 with defendant's betting history with Sand Island Sports, his text  
25 messages with Agent 1 and Wayne Nix, and an audio recording in  
26 English sent by defendant, among other evidence. (Declaration ¶ 12.)  
27 Shortly after the reverse proffer, counsel requested a plea agreement  
28 that would allow defendant to plead guilty to a single-count



1 information charging him with the less serious offense of providing  
2 false statements. (Id. ¶ 13.) The government agreed.

3 On June 16, 2022, the government extended a plea offer to  
4 defendant, and requested a response by June 23<sup>rd</sup>. (Exhibit D.) After  
5 several rounds of negotiations, including over the factual basis and  
6 potential fine, defendant signed the plea agreement on July 7th.  
7 During this time, defense counsel never suggested that defendant was  
8 factually innocent and did not request any additional discovery.  
9 (Declaration ¶ 14.)

10 In his Opposition, defendant states that he was given only two  
11 days to consider the proposed plea, and that he had no choice but to  
12 accept a plea agreement because the government provided defendant  
13 with an ultimatum: sign a plea agreement or face arrest and  
14 extradition in Korea, thereby ruining his baseball season.  
15 (Opposition at 2, 8.) The government disagrees.

16 First, while the government did ask counsel to notify the  
17 government relatively quickly whether defendant wanted a pre-  
18 indictment resolution, as described above, defendant was given nearly  
19 a month to consider successive versions of the proposed plea before  
20 defendant ultimately signed the final version of the plea agreement.

21 Second, the government disagrees that defendant or his counsel  
22 were given any ultimatum regarding possible arrest and extradition.  
23 When defense counsel (not the government) raised the issue of arrest  
24 and extradition during a meet and confer, the government truthfully  
25 confirmed that arrest warrants are typically issued after an  
26 indictment is returned. (Declaration ¶ 15.) Indeed, Rule 9 of the  
27 Federal Rules of Criminal Procedure states that the court "must issue  
28 a warrant [] for each defendant named in an indictment. . . ."

1 (emphasis added.) Government counsel noted that this could result in  
2 a foreign arrest, because after arrest warrants are issued, law  
3 enforcement officers are required to submit those warrants to a  
4 central database which could trigger a foreign arrest - all facts  
5 beyond the control of government counsel. However, government  
6 counsel was simply responding to a topic raised by defense counsel.  
7 Moreover, as described above, defendant's current counsel was  
8 actively seeking plea negotiations from the earliest interactions  
9 with the government, which preceded any discussions of arrest or  
10 extradition. (See Exhibit C.)<sup>2</sup>

11 After a plea agreement was negotiated, counsel requested that it  
12 be filed under seal and that defendant be allowed to continue playing  
13 baseball in Korea. (Declaration ¶ 17.) The government initially  
14 declined counsel's request, but eventually agreed to both requests  
15 for the reasons described in the under-seal declaration. (Id. ¶ 18.)  
16 On at least two occasions, the government advised counsel that it was  
17 prepared to unseal the matter, but eventually conceded to counsel's  
18 requests to keep the matter sealed and continue defendant's initial  
19 appearance to allow defendant to finish the baseball season, and  
20 later, to finish the playoffs. (Id. ¶ 19.)

21 In his opposition, defendant states that in November 2022 he  
22 "found evidence suggesting that other individuals had sought to  
23 induce him to collude or obstruct the government's investigation but  
24 Puig had repeatedly refused - at a minimum contradicting the  
25

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26  
27 <sup>2</sup> Moreover, as a matter of practice in this district, defense  
28 attorneys often request that clients be permitted to self-surrender  
at the courthouse before any warrants are submitted. Defense counsel  
never requested that her client be allowed to self-surrender if the  
government obtained an indictment. (Declaration ¶ 16.)

1 government's obstruction allegations." (Opposition at 3.) This  
2 claim is vague but appears to be inaccurate for two reasons.

3 First, in November 2022, defense counsel contacted the  
4 government and stated that she believed that Agent 1 and Individual B  
5 entrapped defendant. (Declaration ¶ 20.) On November 22, 2022, the  
6 government provided counsel additional discovery showing that neither  
7 Agent 1 nor Individual B could have legally or factually entrapped  
8 defendant, because all of the contemplated charges (False Statements  
9 and Obstruction of Justice) stemmed from defendant's January 27<sup>th</sup>  
10 interview, and neither Agent 1 nor Individual B were working at the  
11 government's direction at that time. Defendant's false statements  
12 and obstructive conduct are solely his responsibility.

13 Second, the new evidence that defendant claims to have "found"  
14 appears to be text messages between defendant and Agent 1 that were  
15 sent in March 2022, two months after both offenses occurred during  
16 the January 27<sup>th</sup> interview. In these messages, Agent 1 asked defendant  
17 several times what defendant said about Agent 1 during the interview.  
18 These text messages show that defendant initially refused to respond  
19 to Agent 1 because he feared law enforcement would seize his cell  
20 phone, but eventually relayed a message to Agent 1 through the person  
21 identified as Individual B in the Information. In that message,  
22 defendant told Individual B to contact Agent 1 and tell him that  
23 defendant said "nothing, I not talking. I said that I only know  
24 [Agent 1] from baseball. Call [Agent 1] and tell him that[.] not text  
25 him." (Exhibit E.) These messages are not exculpatory. Further,  
26 they are not new to defendant. The government presented these  
27 messages to defendant and his current counsel during the reverse  
28 proffer. (Declaration ¶ 22; Exhibit E.)

1 **III. ARGUMENT**

2 **A. Defendant Breached His Plea Agreement**

3 Defendant appears to concede that he breached the express terms  
4 of his plea agreement by not pleading guilty; however, he argues that  
5 he had no choice but to plead guilty because an indictment would have  
6 interfered with his baseball season. (Opposition at 8.) This is not  
7 a defense and is irrelevant to the issues before the Court.

8 Defendant suggests that the proper procedure here is for the  
9 government to violate its obligations in the plea agreement and  
10 charge defendant with Obstruction of Justice now, and then allow  
11 defendant the opportunity to bring a motion to dismiss the indictment  
12 later, which he "might or might not decide to assert." (Opposition  
13 at 6-7.) The government disagrees. Defendant fails to cite to any  
14 authority for his suggested approach, and it is contrary to the  
15 explicit terms of the plea agreement.

16 As defendant concedes, plea agreements are examined by contract  
17 law standards. Here, the filed plea agreement is the governing  
18 contract, and expressly outlines the procedures to follow in this  
19 situation. (Plea Agreement ¶¶ 21, 22.) It states that the  
20 government will be relieved of its obligations only after "the USAO  
21 declares this agreement breached, and the Court finds such a breach  
22 to have occurred." (Id.) (emphasis added.) Thus, based on the  
23 contract in this case, the government is not relieved of its  
24 obligations until the Court finds a breach.<sup>3</sup>

---

25  
26  
27 <sup>3</sup> The plea agreement here also states that the effective date of  
28 the plea agreement is upon the signature of the defendant, his  
counsel, and an Assistant U.S. Attorney. (Plea Agreement ¶ 20.)  
Thus, the plea agreement became effective, and binding on the  
parties, when the last signature was added on August 29, 2022.

1 Several circuits have held that the government may not  
2 unilaterally determine a breach. See, e.g., United States v. Miller,  
3 406 F.3d 323, 334-35 (5th Cir. 2005) (government may not unilaterally  
4 declare breach because due process requires that defendant be given  
5 notice and an opportunity to debate issue with court); United States  
6 v. Cox, 985 F.2d 427, 430 (8th Cir. 1993) (neither government nor  
7 defendant may unilaterally declare plea agreement void; only court  
8 has that authority); United States v. Sowemimo, 335 F.3d 567, 571-72  
9 (7th Cir. 2003) (although government may not unilaterally declare  
10 breach of plea agreement, defendant not entitled to evidentiary  
11 hearing because he admitted he did not cooperate fully.)

12 **B. The Government Need Not Prove Civil Damages**

13 In his opposition, defendant also cites to numerous civil cases  
14 that indicate that the moving party must show civil damages in a  
15 breach of contract case; however, defendant fails to cite to a single  
16 criminal case with a similar holding. Defendant also suggests that  
17 the government has not suffered damages because it can seek an  
18 indictment now for Obstruction of Justice without a finding by the  
19 Court. (Opposition at 5-6.) As discussed above, the government  
20 disagrees. Further, defendant fails to recognize the additional time  
21 and resources that will be devoted to a trial in this matter, or the  
22 substantial resources already expended preparing and producing  
23 additional discovery in preparation for trial.

24 Defendant also argues that the motion should be denied because  
25 the government did not specify the "exact[] obligation(s) of which it  
26 seeks to be relieved." (Opposition at 5-6.) The plea agreement,  
27 however, contains only one material obligation, i.e., not to charge  
28 defendant with Obstruction of Justice. (Plea Agreement ¶ 3(d).) Not

1 only did the Government's Motion for Breach cite to its obligation in  
2 paragraph 3(d) (Motion at 1-2), but defendant is clearly aware of the  
3 government's obligation because he requested it (Exhibit D).

4 **C. No Objection to Deferring on Paragraph 22**

5 Defendant requests that any adjudication of the issue in  
6 paragraph 22, i.e., whether the government can introduce his factual  
7 basis at trial, be deferred to pre-trial motions. (Opposition at 7.)  
8 The government does not object to defendant's request.

9 **D. The Government Provided Notice of Intent to Seek a Breach**

10 In his opposition, defendant argues that the Court should deny  
11 the government's motion because the government did not meet and  
12 confer and provided defendant "no notice whatsoever," in violation of  
13 Local Rule 7-3.<sup>4</sup> (Opposition at 10.) The government disagrees.

14 During the hearing on November 23, 2022, the government advised  
15 both defendant and the Court that it would seek a breach of the plea  
16 agreement if defendant failed to plead guilty. Later on November 23,  
17 2022, the government provided counsel written notice that it would  
18 seek a motion for breach if defendant refused to abide by the terms  
19 of his plea agreement and plead guilty. (Exhibit F.) On November  
20 28, 2022, the parties met and conferred and defense counsel advised  
21 the government that defendant does not intend to plead guilty. (Dkt.  
22 No. 26.)

23 **IV. CONCLUSION**

24 For all of these reasons, the government requests that the  
25 Court make a finding that defendant breached his plea agreement.

26 \_\_\_\_\_  
27 <sup>4</sup> The Court's Criminal Motion & Trial Order required defendant  
28 to serve the Opposition on the government by 4:30 p.m.; however,  
defendant filed his opposition late at 10:32 p.m. The government  
does not object to the late filing.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CRIMINAL MINUTES—GENERAL

Page 1 of 3Case No. CR 22-394-DMGDate January 6, 2023Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGEInterpreter N/AKane Tien  
*Deputy Clerk*Not Reported  
*Court Reporter*Not Present  
*Assistant U.S. Attorney*

<u>U.S.A. v. Defendant(s):</u>	<u>Present</u>	<u>Cust.</u>	<u>Bond</u>	<u>Attorneys for Defendant(s):</u>	<u>Present</u>	<u>Appt.</u>	<u>Ret.</u>
Yasiel Puig Valdes	Not		✓	Keri Curtis Axel	Not		✓

**Proceedings: [IN CHAMBERS] ORDER GRANTING MOTION TO FIND BREACH OF PLEA AGREEMENT [33]**

This action is before the Court on the Government's motion to find Defendant Yasiel Puig Valdes in breach of the plea agreement. [Doc. # 33.] The Government argues that Defendant breached the agreement by failing to plead guilty at his plea hearing on November 23, 2022 and accordingly seeks relief from its obligations under the agreement. *Id.* at 3.<sup>1</sup> The Court **GRANTS** the motion for the reasons set forth below.

**I.  
BACKGROUND**

On July 7, 2022, Defendant and his attorney signed a plea agreement in which Defendant agreed, among other things, to plead guilty to one count of making false statements in violation of 18 U.S.C. § 1001(a)(2). The alleged false statements occurred during a January 27, 2022 interview with Homeland Security and IRS agents and the U.S. Attorney's Office during an investigation into illegal sports gambling and money laundering. [Doc. # 6 at 9.] The Government agreed not to criminally prosecute Defendant for obstruction of justice, as well as to make certain recommendations at sentencing. *See id.* at 3.

The plea agreement also contained the following provision regarding breach:

Defendant agrees that if defendant, at any time after the effective date of this agreement, knowingly violates or fails to perform any of defendant's obligations under this agreement ("a breach"), the USAO may declare this agreement breached. All of defendant's obligations are material, a single breach of this agreement is sufficient for the USAO to declare a breach, and defendant shall not be deemed to have cured a breach without the express agreement of the USAO in writing. If the USAO declares this agreement breached, and the Court finds such a breach to have occurred, then: (a) if defendant has previously

<sup>1</sup> Citations to the record are to the CM/ECF pagination.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CRIMINAL MINUTES—GENERAL

Page 2 of 3

entered a guilty plea pursuant to this agreement, defendant will not be able to withdraw the guilty plea, and (b) the USAO will be relieved of all its obligations under this agreement.

*Id.* at 15–16. The Government signed and filed the plea agreement on August 29, 2022. *Id.* at 18. On August 29, 2022, Defendant was charged by information with one count of making false statements in violation of 18 U.S.C. § 1001(a)(2). [Doc. # 1.]

Defendant was arraigned on November 15, 2022, and his plea hearing was scheduled for November 23, 2022. [Doc. # 22.] On November 23, the Court granted Defendant’s request to continue the hearing to November 29, 2022. [Doc. # 24.] On November 28, the parties informed the Court that Defendant did not intend to enter a guilty plea, and the Court vacated the hearing. [Doc. # 25.] This motion followed.

Trial is currently scheduled to begin on February 14, 2023. [Doc. # 32.]

## II. DISCUSSION

As noted, the Government moves the Court to find Defendant in breach, so that the Government is relieved from its obligations in the plea agreement. In response to the Government’s motion, Defendant argues there have not yet been any damages, so that the Government cannot meet the elements of a contractual breach, and any request for declaratory relief is not actionable or ripe for adjudication. Opp. at 5 [Doc. # 45.]

“Because important due process rights are involved, plea negotiations must accord a defendant requisite fairness and be attended by adequate ‘safeguards to insure the defendant what is reasonably due (in) the circumstances.’” *United States v. Calabrese*, 645 F.2d 1379, 1390 (10th Cir. 1981) (quoting *Santobello v. New York*, 404 U.S. 257, 262 (1971)).

[O]ne requisite safeguard of a defendant’s rights is a judicial determination, based on adequate evidence, of a defendant’s breach of a plea bargaining agreement. The question of a defendant’s breach is not an issue to be finally determined unilaterally by the government. *United States v. Simmons*, 537 F.2d 1260, 1261-62 (4th Cir. 1976). If the pleadings reveal a factual dispute on the issue of breach, the district court must hold a hearing to resolve the factual issues. If the pleadings reveal no disputed factual issues, no hearing is necessary and the court may determine the issue of breach as a matter of law.

We believe that constitutional principles of fairness also require that once the government acknowledges the existence of an agreement, the government has the burden of establishing a breach by the defendant if the agreement is to be considered unenforceable.



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CRIMINAL MINUTES—GENERAL

Page 3 of 3

*Id.* (cited with approval in *United States v. Packwood*, 848 F.2d 1009, 1011 (9th Cir. 1988)). The Government must establish a breach by a preponderance of the evidence. *Packwood*, 848 F.2d at 1011.

Here, Defendant did not plead guilty, despite agreeing to do so as part of his plea, and accordingly breached the agreement. The Government cannot unilaterally declare Defendant to have breached the plea agreement but must obtain a judicial finding of breach to be relieved of its obligations. Until the Government is so relieved, it is bound by its obligation not to prosecute Defendant for obstruction of justice. [See Doc. # 6 at 3.] Defendant is therefore incorrect that “nothing is stopping the government from proceeding with the case, using the regular tools at its disposal to seek an indictment” for the additional charge. Opp. at 7. Moreover, as the Government points out, it now faces the “additional time and resources that will be devoted to a trial in this matter” as a direct consequence of Defendant’s breach. Accordingly, the Court disagrees with Defendant’s argument that any claim for breach of the plea agreement is not actionable due to a lack of damages or because the request for a finding of breach is not ripe.

Finally, Defendant argues that the Government failed to meet and confer with the defense prior to filing the motion, as required by Local Rule 7-3. According to the Court’s Criminal Motion and Trial Order, the parties’ counsel must meet and confer to attempt to resolve the disputed issue before filing a motion. [Doc. # 28 at 1.] As long as there is substantial compliance with the “meet and confer” requirement, the Court generally does not require the Local Rule 7-3 certification in criminal motions. The Government has filed under seal a November 23, 2022 letter from the Government advising Defendant of its intent to seek a finding that Defendant breached the plea agreement. Presumably, the parties had an opportunity thereafter to confer on the matter prior to the Government’s filing of the motion on December 14, 2022 and reached no agreement. The Court therefore finds that the Government substantially complied with the Court’s Order.

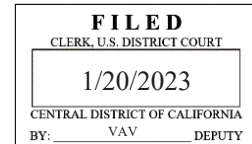
The Court finds Defendant in breach of the plea agreement.<sup>2</sup> The Government therefore is relieved of any obligations it undertook in the plea agreement.

**IT IS SO ORDERED.**

---

<sup>2</sup> Defendant requests, and the Government does not oppose, that the Court defer any finding on whether the breach was “knowing.” Opp. at 8; Reply at 12 [Doc. # 46]. The Court accordingly does not reach that issue at this time.

There is some factual dispute over what happened during the January 27, 2022 interview and the plea negotiation process. See Reply at 3–9. The factual dispute is not relevant to this motion, and no hearing on the motion is required. The crucial facts—that Defendant signed the plea agreement and no longer intends to plead guilty and the contents of that plea agreement—are undisputed. Defendant does not argue that he entered into the plea agreement involuntarily. [See Doc. # 45 at 5.]



UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

October 2022 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

YASIEL PUIG VALDES,

Defendant.

CR 22-394 (A) -DMG

F I R S T  
S U P E R S E D I N G  
I N D I C T M E N T

[18 U.S.C. § 1503(a): Obstruction of Justice; 18 U.S.C. § 1001(a)(2): Making False Statements]

The Grand Jury charges:

COUNT ONE

[18 U.S.C. § 1503(a)]

A. INTRODUCTORY ALLEGATIONS

At times relevant to this First Superseding Indictment:

Major League Baseball and Defendant PUIG

1. Major League Baseball ("MLB") was a professional baseball organization and the oldest major professional sports league in the world.

1           2.     MLB players were governed by MLB rules that were presented  
2 to players during a number of informational and educational programs.  
3 All players were responsible for knowing and adhering to the  
4 requirements and expectations of each of these rules.

5           3.     MLB Rule 21(d)(3) prohibited any player, umpire, or club or  
6 league official or employee from placing bets with illegal book  
7 makers or agents of illegal book makers.

8           4.     MLB clubs were required to certify each year that they had  
9 instructed their players and staff on Rule 21 and posted copies of  
10 Rule 21 in English and Spanish in home and visitor clubhouses.

11           5.     Defendant YASIEL PUIG VALDES ("PUIG") was a professional  
12 baseball player who played for the Los Angeles Dodgers between 2013  
13 and 2018. The Dodgers traded defendant PUIG to the Cincinnati Reds  
14 in December 2018, and the Reds traded defendant PUIG to the Cleveland  
15 Indians on July 31, 2019. As of April 2022, defendant PUIG played  
16 for the Kiwoom Heroes of the Korean Baseball Organization League,  
17 based in South Korea.

18           The Investigation into Illegal Sports Gambling

19           6.     The Department of Homeland Security, Homeland Security  
20 Investigations ("HSI") and the Internal Revenue Service - Criminal  
21 Investigation Division ("IRS-CI") in Los Angeles and the United  
22 States Attorney's Office ("USAO") for the Central District of  
23 California were conducting a federal criminal investigation into  
24 federal crimes, including illegal sports gambling and money  
25 laundering (the "Federal Investigation").

26           7.     The operation of a sports gambling business in California  
27 was prohibited by 18 U.S.C. § 1955 and California Penal Code § 337a.  
28

1                   The Wayne Nix Illegal Sports Gambling Business

2           8.     Wayne Nix ("Nix") was a resident of Orange County,  
3 California. Nix was a minor league baseball player from 1995 to  
4 2001.

5           9.     Sometime after 2001, Nix began operating an illegal  
6 bookmaking business in the Los Angeles area that accepted and paid  
7 off bets from bettors in California and elsewhere in the United  
8 States based on the outcomes of sporting events at agreed-upon odds  
9 (the "Nix Gambling Business"). Through contacts he had developed  
10 during his own career in professional sports, Nix created a client  
11 list of current and former professional athletes, and others.

12          10.    Nix used agents to place and accept bets from others for  
13 the Nix Gambling Business, thus expanding the business.

14          11.    Sand Island Sports operated Internet sports gambling  
15 websites, including [www.sandislandsports.com](http://www.sandislandsports.com) and [www.betprestige.com](http://www.betprestige.com)  
16 (hereinafter, the "Sand Island Sports websites"), hosted on servers  
17 primarily located outside the United States. Sand Island Sports also  
18 operated toll-free telephone services (the "call center") to  
19 facilitate sports betting. The Sand Island Sports websites and call  
20 center facilitated unlawful sports gambling by providing a platform  
21 to book makers to track bets placed by their clients.

22          12.    Agent 1 was a former collegiate baseball player and a  
23 private baseball coach. Beginning in 2019, Agent 1 worked for the  
24 Nix Gambling Business as an agent. Agent 1 placed and accepted bets  
25 from others and helped Nix maintain the Nix Gambling Business by,  
26 among other things, demanding and collecting money owed to the Nix  
27 Gambling Business by bettors and others.

1           13. As part of the Nix Gambling Business, Nix and Agent 1 used  
2 the Sand Island Sports websites and call center to create accounts  
3 through which wagers would be placed and tracked, and to set credit  
4 limits for bettors.

5           14. Nix provided bettors with account numbers and passwords for  
6 the Sand Island Sports websites and directed the bettors to use the  
7 Sand Island Sports websites to place bets with the Nix Gambling  
8 Business.

9           15. Bettors would place bets online through the Sand Island  
10 Sports websites, and through Nix, Agent 1, and others working at  
11 Nix's direction.

12           16. In January 2019, defendant PUIG met Agent 1 at a youth  
13 baseball camp, and Agent 1 later assisted defendant PUIG in preparing  
14 for the upcoming baseball season.

15           17. Individual A was a client of the Nix Gambling Business who,  
16 in or about June 2019, was owed at least \$200,000 in gambling  
17 winnings from the Nix Gambling Business.

18           18. Individual B was a private baseball coach who assisted  
19 defendant PUIG in placing sports bets with Agent 1 and assisted Agent  
20 1's efforts to collect gambling debts from defendant PUIG.

21           Defendant PUIG's Use of the Nix Gambling Business

22           19. Beginning no later than May 2019, defendant PUIG began  
23 placing bets on sporting events with the Nix Gambling Business  
24 through Agent 1. By June 17, 2019, defendant PUIG owed the Nix  
25 Gambling Business \$282,900 for sports gambling losses.

26           20. Between June 25, 2019, and July 3, 2019, in a series of  
27 text messages, Agent 1 and Individual B instructed defendant PUIG to  
28 make a check or wire transfer payable to Individual A.

1           21. On June 25, 2019, defendant PUIG withdrew \$200,000 from a  
2 Bank of America financial center in Glendale, California, and  
3 purchased two cashiers' checks for \$100,000 each that were made  
4 payable to Individual A.

5           22. On July 3, 2019, defendant PUIG sent the cashiers' checks  
6 to Individual A via the United Parcel Service ("UPS") and sent a  
7 photo of the UPS shipping label to Agent 1 and Individual B via text  
8 message.

9           23. On July 4, 2019, via text message, Nix provided defendant  
10 PUIG direct access to the Sand Island Sports websites, assigned  
11 defendant PUIG player identification number "R182" and password "yp,"  
12 and provided defendant PUIG the Sand Island Sports website addresses.

13           24. Between July 4, 2019, and September 29, 2019, defendant  
14 PUIG placed 899 bets on sporting events through the Nix Gambling  
15 Business, Agent 1, and Sand Island Sports.

16           Investigation into Wayne Nix and Agent 1

17           25. On January 27, 2022, defendant PUIG was interviewed in the  
18 presence of his attorney by HSI, IRS-CI, and the USAO regarding the  
19 Federal Investigation, including the cashiers' checks defendant PUIG  
20 sent to Individual A. Defendant PUIG, through his counsel, requested  
21 that HSI not record the interview.

22           26. At the beginning of the interview, a Special Agent from HSI  
23 admonished defendant PUIG that lying to federal law enforcement  
24 agents is a crime, and defendant PUIG stated that he understood.

25           B. OBSTRUCTION OF JUSTICE

26           27. On or about January 27, 2022, in Los Angeles County, within  
27 the Central District of California and elsewhere, defendant PUIG  
28 corruptly endeavored to influence, obstruct, and impede the due

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1 administration of justice, namely, the Federal Investigation, by  
2 providing false information to, and withholding information from,  
3 HSI, IRS-CI, and the USAO. In particular, in a meeting between  
4 defendant PUIG and HSI, IRS-CI, and the USAO, defendant PUIG falsely  
5 stated that he had never discussed sports gambling with Agent 1 and  
6 withheld information about Agent 1's involvement with bets made by  
7 defendant PUIG and the payment of defendant PUIG's gambling debts.

## COUNT TWO

[18 U.S.C. § 1001(a)(2)]

28. The Grand Jury incorporates paragraphs 1 through 26 of this First Superseding Indictment here.

29. On or about January 27, 2022, in Los Angeles County, within the Central District of California, and affecting the Federal Investigation in the Central District of California, and in a matter within the jurisdiction of the executive branch of the government of the United States, namely, HSI, IRS-CI, and the USAO, defendant PUIG knowingly and willfully made the following materially false statements and representations to HSI, IRS-CI, and the USAO, knowing that these statements and representations were untrue:

a. Defendant PUIG falsely stated that he had never discussed or talked about sports betting with Agent 1. In fact, as defendant PUIG then knew, defendant PUIG discussed and talked about sports betting with Agent 1 via telephone and text messages on numerous occasions, and Agent 1 assisted defendant PUIG in placing at least 899 bets on sporting events between in or about May 2019 and on or about September 29, 2019.

b. Defendant PUIG falsely stated that he had placed a bet online with an unknown person on an unknown website which resulted in a loss of \$200,000. In fact, as defendant PUIG then knew, defendant PUIG placed a series of bets directly through Agent 1 that resulted in the gambling loss, and not through a website.

c. Defendant PUIG falsely stated that he did not know the individual who instructed him to send \$200,000 in cashiers' checks to Individual A and that he had never communicated with that person via text message. In fact, as defendant PUIG then knew, Agent 1 and



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Individual B, who defendant PUIG knew, instructed defendant PUIG via text messages to send \$200,000 to Individual A, and defendant PUIG had communicated with Agent 1 and Individual B via text messages on multiple occasions.

A TRUE BILL

/s/  
\_\_\_\_\_  
Foreperson

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United States Attorney



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10 Attorneys for Plaintiff  
 11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 YASIEL PUIG VALDES,

18 Defendant.

CR No. 22-394-DMG

GOVERNMENT'S NOTICE OF MOTION AND  
 MOTION FOR ORDER RE: DEFENDANT'S  
 KNOWING BREACH OF PLEA AGREEMENT;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES

Hearing Date: July 5, 2023  
 Hearing Time: 2:30 p.m.  
 Location: Courtroom of the  
 Hon. Dolly M. Gee

21 Plaintiff United States of America, by and through its counsel  
 22 of record, the United States Attorney for the Central District of  
 23 California and Assistant United States Attorneys Jeff Mitchell and  
 24 Dan G. Boyle, hereby moves this Court for an Order finding that  
 25 defendant Yasiel Puig Valdes knowingly breached his plea agreement  
 26 with the government in this matter, and accordingly, that the  
 27  
 28

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1  
2 government may seek to admit the factual basis of defendant's plea  
3 agreement (ECF No. 6) at trial in this matter.

4 Plaintiff brings this Motion now to allow any attorney-client  
5 privilege issues raised by defendant's anticipated response to be  
6 resolved sufficiently in advance of trial to avoid affecting the  
7 current August 8 trial date.

8 This Motion is based upon the attached memorandum of points and  
9 authorities, the files and records in this case, and such further  
10 evidence and argument as the Court may permit.

11 Pursuant to the Local Rules and the Court's Individual  
12 Practices, the undersigned sought to confer with defense counsel  
13 regarding the content of this Motion by letter dated April 20, 2023,  
14 and sent by e-mail on that date, but did not receive a response.

15  
16 Dated: June 1, 2023

Respectfully submitted,

17 E. MARTIN ESTRADA  
18 United States Attorney

19 MACK E. JENKINS  
20 Assistant United States Attorney  
Chief, Criminal Division

21 /s/  
22 DAN G. BOYLE  
23 JEFF MITCHELL  
Assistant United States Attorneys

24 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

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1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**

2        **I.        INTRODUCTION**

3            On July 7, 2022, defendant Yasiel Puig Valdes ("defendant")  
4        executed an agreement with the United States promising to plead  
5        guilty to a violation of 18 U.S.C. § 1001 (False Statements), and in  
6        return, the government agreed not to, inter alia, prosecute defendant  
7        for a violation of 18 U.S.C. § 1503 (Obstruction of Justice) (the  
8        "Plea Agreement"). See ECF No 6. The Plea Agreement was in writing,  
9        translated into Spanish for defendant, and also executed by  
10       defendant's counsel. In the Plea Agreement, defendant and his counsel  
11       each certified that defendant was not promised anything beyond the  
12       terms of the Plea Agreement; defendant was not threatened or forced  
13       in any way into signing the Plea Agreement; and defendant's decision  
14       to sign the Plea Agreement was informed and voluntary. The Plea  
15       Agreement also included a provision stating that, if defendant  
16       breached the agreement, then the agreed-upon factual basis stated in  
17       the Plea Agreement (the "Factual Basis") would be admissible in any  
18       subsequent post-breach proceedings against defendant - and included  
19       an explicit waiver of Federal Rule of Evidence 410 for that purpose.

20           Defendant did not plead guilty as agreed and promised, and this  
21       Court has already found that in failing to do so, defendant breached  
22       the Plea Agreement. See ECF No. 51. In so finding, however, the  
23       question of whether defendant's breach was "knowing" for the purposes  
24       of the waivers set forth the Plea Agreement was explicitly carved out  
25       for future briefing. With defendant now proceeding to trial, the  
26       government moves this court to make such a finding: that defendant's  
27       breach was "knowing," such that the government may offer the Factual  
28       Basis at trial, should the government elect to do so.

1 To be clear, the government is not seeking to introduce  
2 defendant's entire Plea Agreement, or to inform the jury in any way  
3 that the Factual Basis was part of an agreement to plead guilty.  
4 Instead, the government proposes to reference the Factual Basis only  
5 as a "written statement agreed to and executed by defendant during  
6 this investigation." The government's proposed form of this trial  
7 exhibit is attached as Appendix A.<sup>1</sup>

## 8 **II. BACKGROUND**

### 9 **A. The Nix Gambling Investigation**

10 In 2017, the Department of Homeland Security - Homeland Security  
11 investigations ("HSI") and the Internal Revenue Service - Criminal  
12 Investigations ("IRS-CI") began investigating an illegal sports  
13 gambling business operated by Wayne Nix (the "Nix Gambling  
14 Business"). See ECF No. 106 (4/10/23 Order denying Def's Mot. to  
15 Compel), at 1. As part of this investigation, Nix's actions to  
16 launder his illicit proceeds and hide his income from the IRS came  
17 under scrutiny. Id. The associated money trail led investigators to  
18 two cashier's checks that defendant purchased from his bank and sent  
19 directly to a significant client of the Nix Gambling Business. Id.

### 20 **B. Defendant's Interview**

21 Defendant was interviewed by Webex video conference on January  
22 27, 2022, with the two undersigned prosecutors, two special agents  
23 assigned to the investigation, defendant, defendant's two attorneys,  
24 and an independent court-certified Spanish language interpreter of

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25 <sup>1</sup> Should the Court grant this Motion, the government may seek to  
26 offer the Factual Basis in its case-in-chief or reserve the Factual  
27 Basis to be used on rebuttal or as impeachment evidence. As such,  
28 this motion seeks a finding of admissibility based the Plea  
Agreement's terms and Rule 410, not to pre-admit the Factual Basis.

1 Cuban descent, who had been retained by the government,  
2 participating. Id. Over the next hour and a half, the government  
3 asked defendant about his knowledge of the Nix Gambling Business, and  
4 defendant largely denied knowledge of the organization and the  
5 persons participating in it, as detailed in the Factual Basis. See  
6 Appendix A. During the interview, government counsel spoke privately  
7 with defendant's then-counsel and stated that the government believed  
8 that defendant was being untruthful, and immediately following the  
9 interview, informed defendant's then-counsel that the government was  
10 considering whether to seek an indictment.

11 **C. Defendant Changes Counsel and Initiates Plea Negotiations**

12 In May 2022, the government began preparing to obtain an  
13 indictment, but on May 25, 2022 the government was contacted by new  
14 counsel for defendant, Keri Curtis Axel, and on May 27, 2022,  
15 defendant's new counsel advised the government via email that she had  
16 authority to engage in plea discussions and requested a reverse  
17 proffer to review the evidence.<sup>2</sup> The government agreed to open plea  
18 negotiations rather than seeking an indictment at that time.

19 On June 6, 2022, the government conducted a reverse proffer with  
20 defendant and his counsel, presenting extensive evidence of  
21 defendant's betting history with the Nix Gambling Business, an audio  
22 recording of a voicemail in English sent by defendant, and other  
23 evidence. See ECF No. 50, at Ex. E. Shortly after the reverse  
24 proffer, defense counsel requested a plea agreement that would allow  
25 defendant to plead guilty to a single-count information charging him  
26

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27 <sup>2</sup> This May 27, 2022 e-mail from defense counsel was previously  
28 submitted to the Court under seal on January 4, 2023. See ECF No. 50,  
at Ex. C.



1 with the offense of providing false statements, rather than  
2 obstruction of justice.

3 **D. The Plea Agreement**

4 On June 16, 2022, the government extended a plea offer to  
5 defendant, and requested a response by June 23<sup>rd</sup>. See ECF No. 50, at  
6 Ex. D. The government and defense counsel then exchanged several  
7 rounds of edits to the proposed plea agreement (id.), and  
8 approximately three weeks later, on July 7, 2022, defendant and his  
9 counsel executed a final version of the Plea Agreement. See ECF No.  
10 6, at 19, 20.

11 In Paragraph 2(a) of the Plea Agreement, defendant agreed to,  
12 inter alia, give up the right to indictment by a grand jury and plead  
13 guilty to an information charging a violation of 18 U.S.C. § 1001  
14 (False Statements). See ECF No. 6, ¶ 2(a). In support of this  
15 agreement, paragraph 9 of the Plea Agreement stated the agreed-upon  
16 Factual Basis, which defendant and the government agreed was accurate  
17 and sufficient to support a plea of guilty. See ECF No. 6, ¶ 9; see  
18 also Appendix A.

19 In return, the government agreed to recommend a reduction under  
20 the sentencing guidelines pursuant to USSG § 3E1.1, and to not charge  
21 defendant with a violation of 18 U.S.C. § 1503 (Obstruction of  
22 Justice) relating to the conduct admitted in the Factual Basis of the  
23 Plea Agreement. See ECF No. 6, ¶ 3(c-d).

24 Paragraphs 21-22 of the Plea Agreement addressed the  
25 consequences of a breach of the Plea Agreement by defendant. In  
26  
27  
28

1 particular, paragraph 21 of the Plea Agreement stated that a breach<sup>3</sup>  
2 of the Plea Agreement by defendant would relieve the government of  
3 its obligations under the Plea Agreement, and paragraph 22 of the  
4 Plea Agreement stated as follows:

5       Following the Court's finding of a knowing breach of  
6 this agreement by defendant, should the USAO choose to pursue  
7 any charge that was either dismissed or not filed as a result  
8 of this agreement, then:

9       a. Defendant agrees that any applicable statute of  
10 limitations is tolled between the date of defendant's signing  
11 of this agreement and the filing commencing any such action.

12       b. Defendant waives and gives up all defenses based  
13 on the statute of limitations, any claim of pre-indictment  
14 delay, or any speedy trial claim with respect to any such  
15 action, except to the extent that such defenses existed as of  
16 the date of defendant's signing this agreement.

17       c. Defendant agrees that: (i) any statements made  
18 by defendant, under oath, at the guilty plea hearing (if such  
19 a hearing occurred prior to the breach); (ii) the agreed to  
20 factual basis statement in this agreement; and (iii) any  
21 evidence derived from such statements, shall be admissible  
22 against defendant in any such action against defendant, and  
23 defendant waives and gives up any claim under the United  
24 States Constitution, any statute, Rule 410 of the Federal  
25 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal  
26 Procedure, or any other federal rule, that the statements or  
27 any evidence derived from the statements should be suppressed  
28 or are inadmissible.

ECF No. 6, at 14-16.

      The Plea Agreement stated in paragraph 26 that defendant agreed  
that, as except as set forth in the Plea Agreement, there were "no  
promises, understandings, or agreements between the USAO and  
defendant or defendant's attorney, and that no additional promise,

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<sup>3</sup> The Plea Agreement defined a breach as where "defendant, at  
any time after the effective date of [the Plea Agreement], knowingly  
violates or fails to perform any of defendant's obligations under  
this agreement." ECF No. 6, at 21.

1 understanding, or agreement may be entered into unless in a writing  
2 signed by all parties or on the record in court." Id., at 17.

3 The Plea Agreement was signed by both defendant and his counsel,  
4 as well as by the attorney for the government. Id. at 18. Defendant  
5 further certified in the Plea Agreement that (1) the Plea Agreement  
6 had been read to him in his primary language, Spanish; (2) that he  
7 had carefully reviewed and considered it; (3) that he voluntarily  
8 agreed to the terms of the Plea Agreement; (4) that he had discussed  
9 the terms of the Plea Agreement with his counsel; (5) that "no  
10 promises, inducements, or representations of any kind" had been made  
11 to him other than those in the Plea Agreement; and (6) that "[n]o one  
12 has threatened or forced [defendant] in any way to enter into [the  
13 Plea Agreement]." Id. at 18-19. Defense counsel similarly certified  
14 that she had (1) carefully and thoroughly discussed the Plea  
15 Agreement with defendant; (2) that, to her knowledge, no "promises,  
16 inducement, or representations of any kind" had been made to  
17 defendant other than those in the Plea Agreement; (3) that no one had  
18 "threatened or forced" defendant into executing that Plea Agreement;  
19 and (4) that defendant voluntarily entered into the Plea Agreement.  
20 Id. at 19-20. Finally, the Plea Agreement was signed by the  
21 interpreter who translated the Plea Agreement for defendant, who  
22 certified that the Plea Agreement had been accurately translated. Id.  
23 at 19.

24 **E. Defendant Fails to Plead Guilty as Agreed**

25 The Plea Agreement was filed with the Court on August 29, 2022.  
26 See ECF No. 6. At defendant's request, the Plea Agreement was lodged  
27  
28

1 under seal.<sup>4</sup> The government moved to unseal the Plea Agreement and  
2 Information on November 10, 2022, see ECF No. 13, and this matter was  
3 unsealed on November 14, 2022. See ECF No. 14.

4 Defendant appeared for his change of plea on November 23, 2022,  
5 but refused to plead guilty in accordance with the plea agreement  
6 that he had signed. See ECF No. 24. At defense counsel's request, the  
7 Court scheduled a second change-of-plea hearing on November 29, 2022,  
8 but defendant again refused to enter a plea of guilty. See ECF No.  
9 26. Defendant then stipulated that did not intend to plead guilty and  
10 requested a trial date. See Id.

#### 11 **F. Relevant Prior Motion Practice**

12 On December 14, 2022, the government moved for a finding that  
13 defendant had breached the Plea Agreement, so that the government  
14 would be relieved of its obligations under the Plea Agreement, and in  
15 particular, so that the government could seek a superseding  
16 indictment from the grand jury for a violation of 18 U.S.C. § 1503,  
17 which the government was prohibited from seeking under the Plea  
18 Agreement (the "Breach Motion"). See ECF No. 33. Defendant opposed  
19 the Breach Motion on December 28, 2022 on multiple grounds, but as is  
20 relevant here, on reply, the government agreed that the Breach Motion  
21 did not govern whether defendant had committed a "knowing breach" of  
22 the Plea Agreement for the purposes of paragraph 22 of the Plea  
23 Agreement. See ECF No. 43. The Court ultimately granted the Breach  
24 Motion, holding that "Defendant did not plead guilty, despite  
25 agreeing to do so as part of his plea, and accordingly, breached the

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26 <sup>4</sup> The basis for the under seal filing have been briefed to the  
27 Court previously, including in the sealed declaration of AUSA Jeff  
28 Mitchell dated January 4, 2023. See ECF No. 50, ¶ 17-19.

1 agreement," ECF No. 51, at 3, and the grand jury returned the First  
2 Superseding Indictment including a § 1503 count on January 20, 2023.  
3 See ECF No. 54.

4 Trial in this matter is presently set to begin on August 8,  
5 2023. See ECF No. 105.

### 6 **III. RELEVANT LAW**

7 Plea agreements are contractual in nature and are measured by  
8 contract law standards. See United States v. Krasn, 614 F.2d 1229,  
9 1233 (9th Cir.1980). As such, disputes over the terms of a plea  
10 agreement are "determined by objective standards." United States v.  
11 Read, 778 F.2d 1437, 1441 (9th Cir. 1985) (citing United States v.  
12 Travis, 735 F.2d 1129, 1132 (9th Cir. 1984)). When construing the  
13 terms of a plea agreement, and the parties' respective obligations  
14 under the same, courts employ traditional contract analysis  
15 principles. See United States v. Clark, 218 F.3d 1092, 1095 (9th Cir.  
16 2000). A court may hold an evidentiary hearing on such a dispute if  
17 necessary "to resolve a factual dispute between the parties over what  
18 they reasonably understood when entering into a plea agreement" - but  
19 need not do so if no factual disputes are raised. United States v.  
20 Plascencia-Orozco, 852 F.3d 910, 923 (9th Cir. 2017).

21 While Federal Rule of Evidence 410 generally precludes admission  
22 of statements made by a defendant as part of plea discussions, in  
23 United States v. Mezzanatto, 513 U.S. 196 (1995), the Supreme Court  
24 held that a defendant can knowingly and voluntarily waive Rule 410's  
25 exclusionary provisions. 513 U.S. at 205, 210-11. Following  
26 Mezzanatto, both the Ninth Circuit and other circuit courts have  
27 routinely upheld waivers of Rule 410 for plea-related statements.

1 See, e.g., United States v. Cha, 769 F. App'x 435, 436 (9th Cir.  
2 2019) ("A district court's decision to admit proffer statements is a  
3 question of law reviewed de novo."); Petrosian v. United States, 661  
4 F. App'x 903, 904 (9th Cir. 2016) ("No Ninth Circuit or Supreme Court  
5 precedent, moreover, actually prohibited introduction of the [proffer  
6 statements] during the government's case-in-chief"); United States v.  
7 Sylvester, 583 F.3d 285, 289 (5th Cir. 2009) (upholding introduction  
8 of plea statements in government's case-in-chief based upon valid  
9 Rule 410 waiver); United States v. Krilich, 159 F.3d 1020, 1026 (7th  
10 Cir. 1999) (upholding validity of Rule 410 waiver; United States v.  
11 Burch, 156 F.3d 1315, 1322 (D.C. Cir. 1998) (upholding application of  
12 Rule 410 waiver and approving introduction of plea statements).

13 Finally, a defendant bears the burden of establishing that a  
14 Rule 410 waiver is invalid. See United States v. Rebbe, 314 F.3d 402,  
15 407 (9th Cir. 2002) ("[T]he Federal Rules of Evidence and Criminal  
16 Procedure are presumptively waivable. The burden is on [defendant] to  
17 overcome this presumption by identifying some affirmative basis for  
18 concluding that the Federal Rules cannot be waived" (internal  
19 citation omitted)).

#### 20 **IV. ARGUMENT**

##### 21 **A. Defendant Knowingly Breached the Plea Agreement**

22 In paragraph 22 of the Plea Agreement, defendant agreed that, in  
23 the event the Court found a "knowing breach" of the Plea Agreement by  
24 defendant, then the "agreed to factual basis statement in [the Plea  
25 Agreement] ... shall be admissible against defendant in any such action  
26 against defendant." ECF No. 6, at 15.

27 Because the Court has already found that defendant breached the  
28

1 Plea Agreement, see ECF No. 51, and because the Ninth Circuit has  
2 expressly found that waivers of Rule 410 such as that in paragraph 22  
3 of the Plea Agreement may be enforced, the question currently before  
4 the Court is whether defendant's breach was "knowing" under the terms  
5 of the Plea Agreement. The Court should find that it was.

6 As noted above, plea agreements are governed by contract law,  
7 and when interpreting a contractual term, courts begin with the  
8 "ordinary and popular" meaning of such terms. See Los Angeles Lakers,  
9 Inc. v. Fed. Ins. Co., 869 F.3d 795, 801 (9th Cir. 2017) ("[C]ourts  
10 must give a contract's terms their 'ordinary and popular' meaning,  
11 'unless used by the parties in a technical sense or a special meaning  
12 is given to them by usage.'" (quoting Palmer v. Truck Ins. Exch., 21  
13 Cal.4th 1109 (1999))).

14 To determine ordinary meaning, courts typically look to  
15 dictionary definitions. See United States v. Cox, 963 F.3d 915, 920  
16 (9th Cir. 2020). Merriam-Webster defines "knowing" as "deliberate" or  
17 "having or reflecting knowledge, information, or intelligence." See  
18 Knowing, Merriam-Webster.com Dictionary, Merriam-Webster,  
19 <https://www.merriam-webster.com/dictionary/knowing>. In turn, Merriam-  
20 Webster defines "deliberate" as "characterized by or resulting from  
21 careful and thorough consideration" or "characterized by awareness of  
22 the consequences." See Deliberate, Merriam-Webster.com Dictionary,  
23 Merriam-Webster, <https://www.merriam-webster.com/dictionary/knowing>.  
24 Similarly, Black's Law Dictionary defines "knowing" as "deliberate"  
25 or "having or showing awareness or understanding." See Knowing,  
26 Black's Law Dictionary (11th ed. 2019). And Black's Law Dictionary  
27 defines "deliberate" as "fully considered," "unimpulsive," or  
28

1 "intentional." See *Deliberate*, Black's Law Dictionary (11th ed.  
2 2019). In sum, applying the common and ordinary meaning of "knowing,"  
3 defendant's decision to breach the Plea Agreement by failing to plead  
4 guilty as agreed was a "knowing breach," if made after consideration,  
5 while aware of the potential consequences, and was not the product of  
6 mistake, haste, or impulsiveness. There should be little question  
7 that defendant's conduct meets this standard.

8 Defendant had nearly five months between the date he signed the  
9 Plea Agreement and his decision not to plead guilty, so his breach  
10 was not the product of haste or lack of consideration. Defendant was  
11 also given multiple opportunities by the Court to enter a plea of  
12 guilty, but still elected not to honor the terms of the Plea  
13 Agreement, so his decision cannot fairly be described as impulsive.  
14 See ECF No. 24 (continuing and resetting guilty plea hearing). While  
15 the government has no insight into discussions between defendant and  
16 his counsel, defendant certified in the Plea Agreement that he  
17 understood the agreement's terms, had enough time to review and  
18 consider it, and had "carefully and thoroughly" discussed it with his  
19 counsel. See ECF No. 6, at 19-20.<sup>5</sup> And finally, there is no serious  
20 argument that defendant mistakenly believed that failing to plead  
21 guilty would not result in a breach of an agreement to plead guilty.

22 Judge Fischer's decision in United States v. McTiernan, No. CR  
23 06-259-DSF, 2010 WL 11667960 (C.D. Cal. July 7, 2010), is  
24 particularly instructive here, as the facts of that case mirror those  
25

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26 <sup>5</sup> In addition, the detailed letters sent by defense counsel to  
27 the U.S. Attorney's Office, which are already before the court under  
28 seal (see ECF No. 77, at Exs. A, C, D), corroborate that counsel and  
defendant appear to have carefully discussed this matter.



1 here in many respects. In both cases, the government was  
2 investigating an unlawful business where the defendant was a user of  
3 an illegal service; in McTiernan,<sup>6</sup> the government was investigating  
4 an illegal wiretapping and private intelligence enterprise which  
5 McTiernan had engaged to gather information on his business  
6 associates, while here, the government was investigating an illegal  
7 sports gambling business which defendant used to place wagers on  
8 sporting events. In both cases, the defendant was approached and  
9 interviewed as a witness, rather than as a target of the  
10 investigation. In both cases, the defendant allegedly made false  
11 statements regarding his use of the illegal business being  
12 investigated, and in both cases the defendant entered into a pre-  
13 indictment agreement to plead guilty to a violation of 18 U.S.C. §  
14 1001. In both cases, defendant breached his plea agreement,<sup>7</sup> was  
15 indicted on additional related charges, and proceeded to trial.

16 In McTiernan, the defendant moved in limine to preclude the  
17 government from offering, inter alia, the factual basis from  
18 McTiernan's plea agreement at trial, arguing that Rule 410 prohibited  
19 introducing such evidence and that the Rule 410 waiver in McTiernan's  
20 plea agreement had not been knowingly made, because his prior counsel  
21 had allegedly failed to advise him of potential grounds for  
22 suppression. See 2010 WL 11667960, at \*1. Judge Fischer rejected  
23

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24 <sup>6</sup> See United States v. McTiernan, 546 F.3d 1160, 1163-64 (9th  
25 Cir. 2008).

26 <sup>7</sup> The most relevant distinction between the facts of McTiernan  
27 and those here is that McTiernan completed his plea allocution, but  
28 then moved to withdraw his plea shortly thereafter (leading to an  
interlocutory appeal), while defendant here simply refused to plead  
guilty as agreed.

1 these arguments, finding that - whatever advice prior counsel had  
2 given regarding suppression<sup>8</sup> - the defendant's decision to enter the  
3 plea agreement, including the Rule 410 waiver, was "a free and  
4 deliberate choice . . . [McTiernan] was not coerced, intimidated, or  
5 deceived" and the decision was "made with a full awareness of the  
6 nature of the right and the consequences of the decision to abandon  
7 it." Id., at \*2. These factors "certainly should be sufficient to  
8 establish that this Defendant has waived his right not to have  
9 certain statements used against him." Id.

10 So too here. Defendant and his counsel certified in writing that  
11 defendant had reviewed the terms of the Plea Agreement, understood  
12 those terms, and was freely entering into an agreement to plead  
13 guilty. See ECF No. 6, at 19-20. And just as McTiernan moved to  
14 suppress evidence after breaching his plea agreement (which was  
15 denied), defendant here brought a selective prosecution motion after  
16 failing to plead guilty (which was denied, ECF No. 106); but as Judge  
17 Fischer held, the desire to bring a motion may be grounds to withdraw  
18 from a guilty plea, but that does not render the waivers in any such  
19 plea agreement invalid. See 2010 WL 11667960, at \*1.<sup>9</sup>

20 Based on arguments raised by defendant in his opposition to the  
21 Breach Motion, ECF No. 45, the government expects that defendant may  
22 argue that his breach was not knowing because he allegedly had little  
23

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24 <sup>8</sup> In McTiernan, the defendant fired his allegedly-ineffective  
25 counsel and disclosed his prior-counsel's allegedly-deficient advice.  
See McTiernan, 546 F.3d 1160, 1164-65.

26 <sup>9</sup> Notably, defendant here never moved to withdraw from his Plea  
27 Agreement, opting instead to simply breach. See ECF No. 51.  
28 Accordingly, the more modest standard for withdrawing a guilty plea  
discussed in McTiernan is irrelevant here.

1 time to consider the Plea Agreement, felt coerced into signing the  
2 Plea Agreement based on a fear of extradition from the Republic of  
3 South Korea, and/or even if defendant's breach was knowing, the  
4 Factual Basis should be excluded under Federal Rule of Evidence 403.  
5 See ECF No. 45, at 8-9. None of these arguments has merit, and the  
6 government addresses each briefly in turn.

7 First, as described above, defendant had roughly three weeks to  
8 consider various drafts of the proposed plea agreement, and defendant  
9 had authorized his counsel to open plea negotiations more than a  
10 month earlier. While the government did put time limits on how long  
11 defendant had to consider these drafts, this record shows that  
12 defendant had ample time to raise any issues he or his counsel  
13 identified with the various drafts of the plea as proposed - which  
14 they did for three weeks.

15 Second, any argument that defendant felt coerced into signing  
16 the Plea Agreement is contradicted by the certifications in the Plea  
17 Agreement, executed by defendant and his counsel. As detailed above,  
18 in the Plea Agreement, defendant and defense counsel explicitly  
19 certified that no one "threatened or forced [defendant] in any way to  
20 enter into [the Plea Agreement]." ECF No. 6, at 18-19. This is  
21 confirmed by the factual record: defendant authorized his counsel to  
22 open plea negotiations as early as May 27, 2022, before the reverse  
23 proffer or any plea was extended, and more than a month before he  
24 signed the Plea Agreement. The Plea Agreement was not forced on  
25 defendant - he affirmatively requested it and engaged in negotiations  
26 to edit it to his liking. The Ninth Circuit has held Rule 410 waivers  
27 are enforceable under similar circumstances. See United States v.

1 Moore, 164 F.3d 632 (9th Cir. 1998) (Rule 410 waiver enforceable as  
2 voluntary where defendant "initiated contact with the United States  
3 Attorney's Office," "arranged to meet with government attorneys," and  
4 was accompanied by counsel for each meeting).

5 Finally, Federal Rule of Evidence 403 is inapplicable here, as  
6 the Plea Agreement expressly states that defendant waived "any claim  
7 under . . . **any other federal rule**, that the statements or any  
8 evidence derived from the statements . . . are inadmissible." ECF No.  
9 6, at ¶ 22(c) (emphasis added). But even assuming arguendo that  
10 defendant did not waive any admissibility challenges to the Factual  
11 Basis under Rule 403, courts have routinely found that introducing  
12 prior plea statements under a Rule 410 waiver enhances a trial's  
13 truth-seeking functions. See McTiernan, 2010 WL 11667960, at \*2  
14 ("Defendant's contention that the statements should be excluded as  
15 more prejudicial than probative pursuant to Rule 403 of the Federal  
16 Rules of Evidence has no merit. To the contrary, introduction of  
17 Defendant's admission of guilt will 'enhance the truth-seeking  
18 function of the trial.'" (quoting Mezzanatto, 513 U.S. 204)). Nor  
19 will admitting the Factual Basis confuse or mislead the jury. As  
20 explained above, the government will only refer to the Factual basis  
21 as a "statement" executed by the defendant and will not inform the  
22 jury that the Factual Basis was part of any plea agreement in its  
23 case-in-chief.<sup>10</sup>

24  
25 <sup>10</sup> Even if the Factual Basis were to be excluded from the  
26 government's case-in-chief (for example, on Rule 403 rounds), the  
27 government should be permitted to use the Factual Basis for  
28 impeachment purposes if defendant elects to take the stand in his  
defense and testifies inconsistently with the admissions stated in  
the Factual Basis. The government respectfully reserves the right to  
(footnote cont'd on next page)

**B. The Court May Conduct an *In Camera* Inquiry Into Any Attorney-Client Discussions or Potential Conflicts**

Courts have broad authority to adjudicate questions of privilege or attorney conflicts. See, e.g., Mannhalt v. Reed, 847 F.2d 576, 580 (9th Cir. 1988). As a general matter, attorneys have a duty of loyalty to their clients and “conflicts of interest may arise . . . if the attorney reveals privileged communications.” Id. (discussing successive representation conflicts). The California Rules of Professional Conduct also provide guidance regarding a defendant’s right to conflict-free representation; in particular, CRPC 3.7 states that “[a] lawyer shall not act as an advocate in a trial in which the lawyer is likely to be a witness unless. . . the lawyer has obtained informed written consent from the client.” See also, United States v. Jones, 381 F.3d 114, 121 (2d Cir. 2004) (court’s disqualification of counsel was not an abuse of discretion because of risk that counsel would testify at defendant’s trial).

Here, the Court may conduct an in camera inquiry into defendant’s discussions with counsel regarding his decision to sign the Plea Agreement, including whether these discussions would place defense counsel in the role of a witness. As noted above, in prior filings, defendant has suggested that he only signed the Plea Agreement because he believed he would be promptly arrested and swiftly extradited from Korea to the United States if he did not sign the proposed plea. See, e.g., ECF No. 45, at 8 (arguing that proposed plea agreement “presented the defendant with a Hobson’s choice: agree to a plea agreement or face a mid-season arrest and extradition,

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revisit this issue if this Motion is denied and defendant elects to testify at trial.

1 ruining his season and interfering with his only source of gainful  
2 employment. The impossibility of this choice was compounded by the  
3 fact that defendant had new counsel, was 17-hours away in a different  
4 time zone, has a third-grade education, ADHD, and needed a Cuban  
5 translator to understand the government's complex plea agreement and  
6 alleged Factual Basis."). In substance, defendant appears to be  
7 arguing that the government's plea offer was effectively coercive,  
8 and thus, that his decision to sign the Plea Agreement was not truly  
9 voluntary.

10 Assuming that defendant would testify at any hearing on this  
11 Motion consistent with these prior arguments, the government would be  
12 entitled to cross-examine defendant about his certifications in the  
13 Plea Agreement, and specifically, his certification that, "no one has  
14 threatened or forced me in any way to enter into this agreement. . .  
15 [and] I am pleading guilty because I am guilty of the charge and wish  
16 to take advantage of the promises set forth in this agreement, and  
17 not for any other reason." ECF No. 6, at 18-19. Such questioning,  
18 however, could potentially raise issues of attorney-client  
19 communications - for example, why defendant believed that he would be  
20 promptly extradited if he refused to sign the plea agreement, and why  
21 he certified that he was entering the plea free from coercion. More  
22 importantly, however, defendant's present counsel also certified that  
23 "no one has threatened or forced my client in any way to enter into  
24 this agreement; [and] my client's decision to enter into this  
25 agreement is an informed and voluntary one." ECF No. 6, at 20. If  
26 defendant testifies that he only signed the plea agreement out of  
27  
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1 fear of arrest and extradition, his counsel's certification to the  
2 contrary risks placing counsel in the role of an adverse witness.

3 Of course, the government is not privy to defendant's attorney-  
4 client communications, nor can the government predict with any  
5 certainty whether and in what ways testimony regarding such  
6 communications may arise at the hearing on the instant motion or at  
7 trial. However, because defendant's opposition to the instant motion  
8 or defense at trial may potentially implicate attorney-client  
9 communications about the plea agreement and the certifications  
10 therein, the government submits that the Court should conduct, in  
11 advance of trial, an *in camera* inquiry to ensure that defendant is  
12 aware of potential attorney-client privilege and/or conflicts issues  
13 that may arise in connection with such communications and that any  
14 privilege and/or conflicts waiver by defendant is knowing and  
15 voluntary.

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**CONCLUSION**

For the foregoing reasons, the government respectfully requests that this Court make a finding that defendant's breach of the Plea Agreement constitutes a "knowing breach" under Paragraph 22 of the Plea Agreement, and accordingly, that the government may seek to admit the Factual Basis in the form accompanying this Motion as Appendix A.

Dated: June 1, 2023

Respectfully submitted,

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/s/  
\_\_\_\_\_  
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[Proposed Form of Defendant's Statement]

On or about July 7, 2022, defendant executed the following statement, which was translated to him by a Spanish-language interpreter, and defendant agreed in writing that this statement was true and accurate:

The Department of Homeland Security, Homeland Security Investigations ("HSI") and the Internal Revenue Service - Criminal Investigation Division ("IRS-CI") in Los Angeles and the United States Attorney's Office ("USAO") for the Central District of California were conducting a federal criminal investigation into federal crimes, including illegal sports gambling and money laundering (the "Federal Investigation").

Wayne Nix was a minor league baseball player from 1995 to 2001. Sometime after 2001, Nix began operating an illegal bookmaking business in the Los Angeles area that accepted and paid off bets from bettors in California and elsewhere in the United States based on the outcomes of sporting events at agreed-upon odds (the "Nix Gambling Business"). Through contacts he had developed during his own career in professional sports, Nix created a client list of current and former professional athletes, and others. Nix used agents, including Agent 1, to place and accept bets from others for the Nix Gambling Business, thus expanding the business. Agent 1 was a former collegiate baseball player and a private baseball coach. Beginning in 2019, Agent 1 worked for the Nix Gambling Business as an agent. Agent 1 placed and accepted bets from others and helped Nix maintain the

1 Nix Gambling Business by, among other things, demanding and  
2 collecting money owed to the Nix Gambling Business by bettors and  
3 others.

4 As part of the Nix Gambling Business, Nix and Agent 1 used the  
5 Sand Island Sports websites and call center to create accounts  
6 through which wagers would be placed and tracked. Nix provided  
7 bettors with account numbers and passwords for the Sand Island Sports  
8 websites and directed the bettors to use the Sand Island Sports  
9 websites to place bets with the Nix Gambling Business. Bettors would  
10 place bets online through the Sand Island Sports websites, and  
11 through Nix, Agent 1, and others working at Nix's direction.

12 Defendant was a professional baseball player who played for the  
13 Los Angeles Dodgers between 2013 and 2018. The Dodgers traded  
14 defendant to the Cincinnati Reds in December 2018, and the Reds  
15 traded defendant to the Cleveland Indians on July 31, 2019. In  
16 January 2019, defendant met Agent 1 at a youth baseball camp, and  
17 Agent 1 later assisted defendant in preparing for the upcoming  
18 baseball season. Individual B was a private baseball coach who  
19 assisted defendant with batting practice, but also assisted defendant  
20 in placing sports bets with Agent 1 and assisted Agent 1's efforts to  
21 collect gambling debts from defendant.

22 Beginning no later than May 2019, defendant began placing bets  
23 on sporting events with the Nix Gambling Business through Agent 1.  
24 Defendant called and sent text messages to Agent 1 with wagers on  
25 sporting events. After Agent 1 received the wagers from defendant,  
26 Agent 1 submitted the bets to the Nix Gambling Business on behalf of  
27 defendant. By June 17, 2019, defendant owed the Nix Gambling Business  
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1 \$282,900 for sports gambling losses.

2 Between June 25, 2019, and July 3, 2019, in a series of text  
3 messages, Agent 1 and Individual B instructed defendant to make a  
4 check or wire transfer payable to Individual A. Individual A was a  
5 client of the Nix Gambling Business who, in or about June 2019, was  
6 owed at least \$200,000 in gambling winnings from the Nix Gambling  
7 Business.

8 On June 25, 2019, defendant withdrew \$200,000 from a Bank of  
9 America financial center in Glendale, California, and purchased two  
10 cashiers' checks for \$100,000 each that were made payable to  
11 Individual A, but did not immediately send the checks due to a  
12 dispute over the balance and access to the Sand Island Sports  
13 website. Between June 28, 2019, and July 4, 2019, defendant requested  
14 direct access to the Sand Island Sports websites, but Nix refused to  
15 provide defendant direct access to the websites until defendant paid  
16 his gambling debt.

17 On July 3, 2019, defendant sent the cashiers' checks to  
18 Individual A via the United Parcel Service ("UPS") and sent a photo  
19 of the UPS shipping label to Agent 1 and Individual B via text  
20 message. Agent 1 forwarded the photo of the UPS label to Nix as proof  
21 that defendant paid his gambling debt.

22 The following day, Nix provided defendant direct access to the  
23 Sand Island Sports websites. Specifically, on July 4, 2019, Nix sent  
24 defendant a text message and assigned defendant player identification  
25 number "R182" and password "yp," and provided defendant the Sand  
26 Island Sports website addresses. Between July 4, 2019, and September  
27 29, 2019, defendant placed 899 bets on tennis, football, and  
28

1 basketball games through the Sand Island Sports websites.

2       On January 27, 2022, defendant was interviewed in the presence  
3 of his attorney by HSI, IRS-CI, and the USAO regarding the Federal  
4 Investigation. At the beginning of the interview, a Special Agent  
5 from HSI admonished defendant that lying to federal law enforcement  
6 agents is a crime, and defendant stated that he understood. During  
7 the interview, defendant made several false statements to the agents  
8 that were material to the investigation. For example, the agents  
9 presented defendant a photo of Agent 1 and asked defendant if he ever  
10 discussed sports gambling with Agent 1. Defendant falsely stated that  
11 he had never discussed sports betting with Agent 1 and that he knew  
12 Agent 1 only from baseball. In fact, as defendant then knew,  
13 defendant discussed sports betting with Agent 1 via telephone and  
14 text messages on hundreds of occasions. In addition, Agent 1 placed  
15 several bets for defendant between May and July 3, 2019, that  
16 resulted in defendant paying \$200,000 to the Nix Gambling Business,  
17 and Agent 1 subsequently assisted defendant obtain an account with  
18 Sand Island Sports and place 899 additional bets on sporting events  
19 through the website between July 4, 2019, and September 29, 2019. The  
20 agents also presented defendant with a copy of one of the cashiers'  
21 checks he purchased on June 25, 2019, made payable to Individual A,  
22 and asked defendant why he sent the cashier's check. Defendant  
23 falsely stated that he had placed a bet online with an unknown person  
24 on an unknown website that resulted in a loss of \$200,000. In fact,  
25 as defendant then knew, defendant placed a series of bets directly  
26 through Agent 1 that resulted in the gambling loss. Defendant also  
27 falsely stated that he did not know the individual who instructed him  
28

1 to send \$200,000 in cashiers' checks to Individual A and that he had  
2 never communicated with that person via text message. In fact, as  
3 defendant then knew, Agent 1 and Individual B instructed defendant  
4 via text messages to send \$200,000 to Individual A, and defendant had  
5 communicated with Agent 1 and Individual B on hundreds of occasions  
6 related to defendant's gambling with the Nix Gambling Business.

7 On March 14, 2022, defendant sent Individual B an audio message  
8 via WhatsApp regarding his January 2022 interview with HSI and IRSCI.  
9 During the audio message, defendant told Individual B that he "[sat]  
10 over there and listen [to] what these people said and I no said  
11 nothing, I not talking. I said that I only know [Agent 1] from  
12 baseball."

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14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 YASIEL PUIG VALDES,

20 Defendant.

Case No. CR 22-394-DMG

**DEFENDANT YASIEL PUIG'S  
OPPOSITION TO  
GOVERNMENT'S MOTION FOR  
ORDER RE ADMISSION OF  
FACTUAL BASIS**

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1 Defendant Yasiel Puig Valdes (“Puig”), through his counsel Waymaker LLP,  
2 respectfully submits his Opposition to the government’s Motion for Order (Dkt.  
3 110), filed June 1, 2023 (“Mot.”), seeking to admit at trial the factual basis of  
4 defendant Puig’s July 7, 2023 plea agreement.

5 **I. INTRODUCTION**

6 The Court should not admit the factual basis of defendant Puig’s plea  
7 agreement in evidence, because it is part of a plea discussion and therefore  
8 inadmissible under Fed. R. Evidence 410 (“Rule 410”). The government claims that  
9 Puig waived the protection of Rule 410 through paragraph 22 of the plea agreement,  
10 and further claims that the factual basis is admissible because Puig has committed a  
11 “knowing breach” of the agreement.

12 The government is wrong. The Ninth Circuit has repeatedly held that a plea  
13 agreement that has not been offered in open court and approved by the Court – like  
14 the one here -- is unenforceable. This is rightly so, as a plea agreement such as the  
15 one the government reached with Puig must be approved by the Court and, had it  
16 been offered in open court, it would not have been accepted until the Court  
17 conducted detailed inquiries into whether the waivers were knowing and voluntarily  
18 made. Because the plea agreement was not offered in open court and approved by  
19 the Court, the government’s motion is a non-starter. Indeed, on this basis alone, the  
20 Court can reject the government’s motion without even a hearing.

21 Even were it the case that the plea agreement had been accepted, however, the  
22 Court could and should reject the admission in evidence of the factual basis because,  
23 under the unique circumstances here, the Rule 410 waiver was not knowingly and  
24 intelligently made.

25 Puig was working six days a week as a professional baseball player in South  
26 Korea when the government indicated that he was immediately going to be indicted  
27 and, although the interview in question had occurred only a few months before, the  
28 government indicated that it would not wait for his return from Korea to indict him,

1 but it would seek an arrest warrant. Given that defense counsel was new to the  
 2 matter, was operating with a 17-hour time difference between Los Angeles and  
 3 South Korea, and required an interpreter to speak with Puig, and given that Puig  
 4 suffers from unique mental health issues and cognitive-educational deficits, in  
 5 retrospect, there simply was insufficient time and opportunity to do a complete  
 6 analysis of the relevant facts and consider all of Puig's defenses. When Puig arrived  
 7 in the United States, however, defense counsel immediately discovered exculpatory  
 8 evidence that undermined the government's proffered evidence, and ultimately the  
 9 factual basis itself, demonstrating that Puig's waiver had not been knowing and  
 10 intelligent at all, as this Court should find.

11 Finally, even if the plea agreement were enforceable (which it is not), and  
 12 even if the Rule 410 waiver were knowing and intelligent (which it was not), the  
 13 Court could and should exclude the factual basis under Rule 403, because its  
 14 admission would devolve into a trial-within-a-trial as to the plea discussions and  
 15 why Puig would have ever signed the plea agreement in the first place. This would  
 16 confuse issues and waste the Court and jury's time. In these circumstances, the  
 17 probative value of the factual basis is vastly outweighed by the potential for undue  
 18 delay and jury confusion, so it should be excluded on this basis as well.

19 The government's motion therefore should be denied.

## 20 **II. FACTUAL AND PROCEDURAL BACKGROUND**

### 21 **A. Plea Discussions**

22 On May 9, 2022, the U.S. Attorney's Office issued a letter stating that it had  
 23 determined that Puig was a target of a criminal investigation and stating that he  
 24 should respond by May 25, 2022. (Decl. of Keri Curtis Axel ISO Opposition to  
 25 Government's Motion for Order ("Axel Decl.") ¶ 2, Ex. A). On May 25, defense  
 26 counsel called the assigned prosecutor, AUSA Jeff Mitchell, who informed counsel  
 27 that he had already drafted an indictment which would be submitted to the grand  
 28 jury the following week. (See January 4, 2023 Declaration of Jeff Mitchell

1 (“Mitchell Decl., Dkt. 50”) ¶ 11.) Indeed, the Chief of the Criminal Division had  
2 already approved and signed the indictment. (*Id.*)

3 Although counsel indicated that Puig was willing to cooperate and be re-  
4 interviewed, AUSA Mitchell made clear the die was cast and Puig would be  
5 charged. Counsel then requested an opportunity to engage in pre-indictment  
6 resolution discussions. AUSA Mitchell gave counsel only a pair of days to indicate  
7 whether she had authority to engage in plea negotiations; and on May 27, defense  
8 counsel responded that she had “authority to move forward to engage in plea  
9 discussions,” and requested to schedule the reverse proffer the parties had discussed.  
10 (*See* Mot. at 3; Mitchell Decl., Dkt. 50 ¶ 11, Ex. C.)

11 On June 6, 2023, AUSA Mitchell gave an attorney proffer summarizing the  
12 proposed charges and the evidence the government believed supported them. (*See*  
13 Mot. at 3; Mitchell Decl., Dkt. 50 ¶ 12.) Present for the defense was the defendant,  
14 Ms. Axel and Mr. Nuño, and a Puig representative, Anthony Fernandez, who acted  
15 as a translator. (*See* February 13, 2023 Decl. of Keri Curtis Axel (Dkt. 61) (“Axel  
16 Decl. Dkt. 61”) ¶ 2.) The government set forth its plan to indict Puig on two  
17 charges and set forth the specific false statements it contended that Puig made, and  
18 the evidence the government believed definitively proved Puig’s guilt. (*See*  
19 Declaration of Anthony Fernandez (“Fernandez Decl.”) ¶ 4.)

20 At the conclusion of the proffer, the government indicated that, if Puig was  
21 not interested in a plea disposition, they would go forward with indicting him, and  
22 DHS would put a warrant for his arrest into the system. (*See id.* at ¶ 5; Axel Decl.  
23 Dkt. 61, ¶ 2.) The parties then discussed that it would trigger a notice to Interpol,  
24 resulting in his arrest in Korea. As described by Fernandez, “Mitchell said that, if  
25 [Puig] did not agree[] to a deal, he would be indicted and the government would get  
26 a warrant for his arrest... based on the discussion, I [] pictured Puig being arrested  
27 in the middle of a game in Korea and hauled off to jail to be extradited to the United  
28 States if he did not make a deal with the government.” (Fernandez Decl. ¶ 5.)

1 The government required a response almost immediately. (Mitchell Decl.  
2 Dkt. 50, ¶ 12.) The defense responded promptly requesting a plea offer to the false  
3 statements charge only. (*Id.* ¶ 13.)

4 On June 16, 2022, the government issued a plea offer, attaching a 20-page  
5 plea offer with a responsive deadline of June 23, 2022 – one week later. (Mitchell  
6 Decl. Dkt. 50, Ex. D.) Defense counsel requested certain edits to the factual basis  
7 and fine within the shortened period, and, on June 27, the government a revised  
8 draft plea agreement; the government clarified the deadline to sign was now only  
9 July 1, 2022. (*See* Axel Decl., ¶¶ 3-4, Ex. B.)<sup>1</sup>

10 Throughout the plea negotiations, Puig and the defense team faced daunting  
11 procedural obstacles. Among other things:

- 12 • Puig was in Korea, which is a 17-hour time difference from Los  
13 Angeles. There were very limited windows of time in the  
14 morning and late at night that Puig and the defense team could  
15 speak.
- 16 • Puig was playing baseball approximately 6 days per week, an  
17 intensive work schedule that included regular travel due to his  
18 game schedule.
- 19 • In addition, schedules had to be coordinated so that there was an  
20 interpreter to translate the plea agreement into Spanish.
- 21 • Counsel for Puig had only been retained on May 25 and had no  
22 pre-existing knowledge of the facts of the case; and no direct  
23 access to Puig or his electronic devices to work through relevant  
24 factual materials, such as Puig's phone messages, with Puig.

25 <sup>1</sup> The government suggests that Puig had three weeks to consider the plea (Mot. at  
26 14), but this is misleading: Puig had initially one week (June 16-June 23, a period in  
27 which he had a travel day and a double-header). (*See* Mitchell Decl. Dkt. 50, Ex. D;  
28 Axel Decl. ¶ 5, Ex. C.) Then, after counsel requested some limited edits to the  
factual basis, the government issued a revised plea agreement with a short deadline  
(again conflicting with Puig's work schedule). (*See id.*) The defense did not (and  
believes it would not have been allowed to) request changes after July 1. The reason  
the deadline lapsed from July 1 to July 7 was because defense counsel provided the  
government with financial documentation relevant to the fine amount, and Mitchell  
did not revert the revised agreement until July 6. (*Id.* ¶¶ 3-4, Ex. B.)



1 (See Axel Decl., ¶ 5, Ex. C.)

2 **B. Puig's Return to the United States and Fact Discovery**

3 Puig returned from Korea on November 13, 2022. As the defense has  
4 previously explained to the Court, the defense only learned of facts supporting his  
5 innocence upon Puig's return, after which it requested documents from the  
6 government to vet those facts and explore his factual innocence defenses. On  
7 November 15, Puig appeared for an initial appearance and arraignment, waiving his  
8 right to an indictment and preliminary hearing; a change of plea proceeding was  
9 scheduled for November 23, 2022. On November 17, 2022, defense counsel  
10 requested discovery from the government. (Dkt. 80-1, Ex. 2).

11 On November 23, only 10 days after his return to the U.S., Puig appeared  
12 before this court and counsel requested a continuance to explore a factual innocence  
13 defense. Puig's counsel informed this Court about the procedural history of Puig's  
14 charges, the urgency created by the government's haste and the threat of  
15 international arrest while Puig was working in South Korea, and the facts that  
16 counsel had reviewed and developed with Puig since he returned to the U.S. and  
17 could meet with counsel in person. Specifically, counsel informed the Court that,  
18 prior to the hearing, counsel had requested and reviewed interview reports that  
19 corroborated some of Puig's statements, casting serious doubt on the government's  
20 prosecution theory.

21 Accordingly, counsel requested various additional discovery items from the  
22 government to explore Puig's factual defenses with him, as the Court would have  
23 required that counsel affirm that they had done under Federal Rules of Criminal  
24 Procedure Rule 11 ("Rule 11"). The Court granted a short continuance of the  
25 change-of-plea hearing until November 29, and ordered the parties to meet and  
26 confer regarding the requested discovery.

1 The government subsequently provided some of the items requested, and the  
2 defense team finally had time in person with Puig to review those items and to  
3 evaluate the context of events with Puig.

4 On November 28, 2022, counsel informed the government that, after  
5 reviewing the materials and further exploring the facts with Puig, he did not intend  
6 to enter a guilty plea, and counsel together informed this Court.

### 7 **III. ARGUMENT**

#### 8 **A. The Plea Agreement Was Never Accepted By This Court and** 9 **Therefore Is Unenforceable**

10 The plea agreement cannot be used against Puig at trial. The Ninth Circuit  
11 has held that “a plea agreement that has not been entered and accepted by the trial  
12 court does not bind the parties.” *United States v. Fagan*, 996 F.2d 1009, 1013 (9th  
13 Cir. 1993) (citing *Mabry v. Johnson*, 467 U.S. 504, 507–08 (1984)); *United States v.*  
14 *Kuchinski*, 469 F.3d 853, 858 (9th Cir. 2006); *United States v. Washman*, 66 F.3d  
15 210, 212 (9th Cir. 1995) (defendant and the government not bound by the plea  
16 agreement until it was accepted by the court)<sup>2</sup>; *United States v. Savage*, 978 F.2d  
17 1136, 1138 (9th Cir. 1992) (“We hold that neither the defendant nor the government  
18 is bound by a plea agreement until it is approved by the court.”); *see also United*  
19 *States v. Gonzalez*, 918 F.2d 1129, 1133 (3d Cir.1990) (“It is axiomatic that a plea  
20 agreement is neither binding nor enforceable until it is accepted in open court.”).  
21 Here, the Court never took Puig’s plea, so the plea agreement is unenforceable. The  
22 government’s argument seeking to enforce paragraph 22 should be a non-starter.

23 The extensive plea agreement procedures to which the parties and this Court  
24 are accustomed are set forth in Rule 11, which was amended in 1975. As explained  
25 by Wright & Miller:

26 \_\_\_\_\_  
27 <sup>2</sup> The Ninth Circuit confirmed in *United States v. Alvarez-Tautimez*, 160 F.3d 573,  
28 576 n.5 (9th Cir. 1998) that the portion of its *Washman* holding relevant here was  
not undercut by *United States v. Hyde*, 520 U.S. 670 (1997).



1 Significantly, the 1975 amendments, for the first time, gave explicit  
 2 recognition to the validity of plea bargaining and sought to move the results  
 3 of the discussions into open court. The changes were 'designed to prevent  
 abuse of plea discussions and agreements by providing appropriate and  
 adequate safeguards.'

4 1A Fed. Prac. & Proc. Crim. § 171 (History of the Rule) (5th ed.) (citing 1975  
 5 Advisory Committee Notes). Such safeguards include the District Court's detailed  
 6 Rule 11(b) colloquy prior to accepting a plea, and its review and discretion to accept  
 7 or reject a plea agreement under Rule 11(c)(3)(A).

8 The instant plea agreement arises under Rule 11(c)(1)(A) because the  
 9 agreement includes a charge bargaining agreement (that is, the government's  
 10 agreement to forego a potential charge in return for a guilty plea). Under Rule  
 11 11(c)(3), where a plea agreement arises under Rule 11(c)(1)(A) – just like under  
 12 Rule 11(c)(1)(C) -- the court may accept the agreement, reject it, or defer a decision  
 13 until the review of the presentence report. As explained by the Supreme Court:

14 Rule 11 "envision[s] a situation in which the defendant performs his side of  
 15 the bargain (the guilty plea) before the Government is required to perform its  
 16 side (here, the motion to dismiss four counts). If the court accepts the  
 17 agreement and thus the Government's promised performance, then the  
 18 contemplated agreement is complete and the defendant gets the benefit of his  
 bargain. But if the court rejects the Government's promised performance,  
 then the agreement is terminated and the defendant has the right to back out  
 of his promised performance (the guilty plea), just as a binding contractual  
 duty may be extinguished by the nonoccurrence of a condition subsequent."  
 (citation omitted).

19 *Hyde*, 520 U.S. at 677–78 (1997).

20 Here, Puig gave notice to the Court that he was not prepared to enter a guilty  
 21 plea, resulting in the plea agreement never being presented to the Court in open  
 22 court to accept or to reject.<sup>3</sup> Under such circumstances, the agreement is simply not  
 23 enforceable. *See generally U.S. v. Norris*, 486 F.3d 1045, 1048-51 (8th Cir. 2007)  
 24

25 <sup>3</sup> In this respect, and as the government itself recognizes (Mot. at 12, n.7), this case  
 26 is wholly distinguishable from *United States v. McTiernan*, 2010 WL 11667960  
 27 (C.D. Cal. July 7, 2010) because, in *McTiernan*, the defendant underwent the rigors  
 28 of a Rule 11 hearing while Puig did not and could not for reasons discussed at  
 Puig's change of plea hearing.

(en banc) (to treat a plea agreement as simply a contract between two parties would impermissibly “ignore[] the presence of a ‘contractual’ condition completely independent of the defendant and the Government—the district court’s independent power under [Rule] 11 to accept or reject the defendant’s associated plea”); *accord United States v. Wood*, 378 F.3d 342, 348 (4th Cir. 2004) (plea agreement “not simply a contract between two parties” but “necessarily implicates the integrity of the criminal justice system and requires the courts to exercise judicial authority in considering the plea agreement and in accepting or rejecting the plea”)(cleaned up).

The Ninth Circuit’s precedents leave no doubt that Puig’s plea agreement is not enforceable, yet the government failed to bring these cases to the Court’s attention.<sup>4</sup> Indeed, and as applicable here, the Ninth Circuit has expressly endorsed the Fifth Circuit’s reasoning that:

the realization of whatever expectations the prosecutor and defendant have as a result of their bargain depends entirely on the approval of the trial court. Surely neither party contemplates any benefit from the agreement unless and until the trial judge approves the bargain and accepts the guilty plea. Neither party is justified in relying substantially on the bargain until the trial court approves it. We are therefore reluctant to bind them to the agreement until that time. As a general rule, then, we think that either party should be entitled to modify its position and even withdraw its consent to the bargain until the plea is tendered and the bargain as it then exists is accepted by the court.

*Savage*, 978 F.2d at 1138 (quoting *United States v. Ocanas*, 628 F.2d 353, 358 (5th Cir. 1980)). Similarly, since Puig withdrew his consent to the agreement and did not plead guilty, the agreement is unenforceable.<sup>5</sup>

<sup>4</sup> The defense was unaware of the above case law, but told the Court at the time of the prior breach motion that there was no breach and that the government’s motion was premature and unripe because it did not present an actionable form of relief. The prior breach motion was also distinct because it did not seek to hold Puig to any promise made in the disregarded agreement, but merely asked the Court for permission to do something that it needed no permission to do.

<sup>5</sup> Although the defense believes that the Ninth Circuit precedent is clear that the plea agreement is unenforceable against Puig even without any formal withdrawal notice because it was not entered in open court and accepted by this Court, out of an

1 For this reason too, the defense respectfully asks the Court to amend its prior  
 2 order finding breach. There can be no breach because the plea agreement is  
 3 unenforceable. Because neither party is bound by any purported commitment in the  
 4 agreement, the government was permitted to supersede the indictment, as the  
 5 defense recognized at the time; thus, the defense has no issue with the relief that the  
 6 Court ordered, but the basis should be amended.

7 **B. The Rule 410 Waiver Should Not Be Enforced Because, Under the**  
 8 **Unique Circumstances Here, It Was Not Knowingly and**  
 9 **Intelligently Made**

10 Even if the plea agreement had been proffered to this Court in open court and  
 11 accepted under Rule 11(e) in a guilty plea proceeding, the Court would not be  
 12 required to enforce the Rule 410 waiver and it should not do so, because the waiver  
 13 was not knowingly and intelligently made under the unique circumstances presented  
 14 here. Specifically, the combination of the government's haste and strict timelines,  
 15 Puig's difficult schedule and language differences, and Puig's mental health and  
 16 cognitive-educational deficits, created a perfect storm in which he did not have the  
 17 ability to knowingly and intelligently waive his Rule 410 right, nor did counsel have  
 18 sufficient information to advise him as to the waiver of such right.

19 **1. Legal Standard**

20 As the government recognized, courts look to principles of contract law to  
 21 interpret plea agreements. But waivers of constitutional and statutory rights are to  
 22 be interpreted narrowly. *United States v. Hamdi*, 432 F.3d 115, 122–123 (2d Cir.  
 23 2005). Ultimately, when construing plea agreements, a court “determine[s] what  
 24 [defendant] reasonably believed to be the terms of the plea agreement at the time of  
 25 the plea.” *United States v. Franco-Lopez*, 312 F.3d. 984, 989 (9th Cir. 2002).

26  
 27 abundance of caution and so the record is clear, Puig is filing herewith a formal  
 28 notice of withdrawal.

1 While the prohibitions on the use of plea evidence in Rule 410 may be  
 2 waived, such waiver must be knowing, voluntary, and intelligent. *United States v.*  
 3 *Rebbe*, 314 F.3d 402, 406 (9th Cir. 2002). The Court’s analysis of whether a waiver  
 4 is valid will depend “on the totality of the circumstances, including the background,  
 5 experience, and conduct of defendant.” *United States v. Bautista-Avila*, 6 F.3d  
 6 1360, 1365 (9th Cir. 1993); *see also United States v. Plugh*, 648 F.3d 118, 127 (2d  
 7 Cir. 2011) (waiver “must be determined on the particular facts and circumstances”  
 8 “including the background, experience, and conduct of the accused” (citation  
 9 omitted)).

10 A waiver is knowing and intelligent if, under the totality of the circumstances,  
 11 it is made with a “full awareness of both the nature of the right being abandoned and  
 12 the consequences of the decision to abandon it.” *Moran v. Burbine*, 475 U.S. 412,  
 13 421 (1986). If the defendant meets his burden of showing that a waiver was neither  
 14 voluntary, knowing, nor intelligent, the Court must not enforce it. *See United States*  
 15 *v. Rebbe*, 314 F.3d 402, 407 (9th Cir. 2002).

16 Even when a plea agreement has been offered in open court and accepted,  
 17 courts have found insufficient evidence that all waivers in such an agreement were  
 18 knowing and intelligent waiver where the Court did not specifically advise a  
 19 defendant as to the right allegedly waived. *Compare United States v. Wessells*, 936  
 20 F.2d 165, 167 (4th Cir. 1991) (declining to enforce appellate waiver where district  
 21 court did not confirm waiver during Rule 11 inquiry) and *United States v. Wiggins*,  
 22 905 F.2d 51 (4th Cir.1990) (affirming appellate waiver where district court went to  
 23 “elaborate lengths” “to ascertain that the defendant did indeed understand the  
 24 meaning of the waiver” and that defendant “understood the implications of his  
 25 decision to waive his right to appeal or challenge his sentence.”).

26 The Court has complete discretion to reject the Rule 410 waiver. *See In re*  
 27 *Morgan*, 506 F.3d 705, 708 (9th Cir. 2007) (“We have noted in various contexts the  
 28 broad discretion that district courts enjoy when choosing to accept or reject plea

1 agreements.”); *see also United States v. Melancon*, 972 F.2d 566, 568 (5th Cir.  
2 1992).

3 2. Given Puig’s Mental Health Challenges and the Plea Discussion  
4 Circumstances, the Waiver Was Not Knowing and Intelligent

5 Evaluating the Rule 410 waiver in this case under the totality of the  
6 circumstances, including the timing and logistics of Puig’s consideration of the plea  
7 agreement, and through the lens of Puig’s background and experience, this Court  
8 should find that the waiver was not knowingly or intelligently made.

9 From the minute Puig’s counsel first spoke with the government, the decision  
10 had already been made to indict Puig on two charges and to seek his arrest from  
11 Korea, Puig’s options were limited, and his decisions were placed on a tight  
12 timeline. When counsel contacted AUSA Mitchell on May 25, the final response  
13 date listed in the target letter, she was told that charges were written up, approved,  
14 and would imminently be submitted to the grand jury. The only way to avoid this  
15 imminent result was by entering into plea discussions.

16 At the government’s June 6, 2022 proffer, the government presented what it  
17 characterized as overwhelming evidence of his guilt, and gave Puig a two-day  
18 deadline to indicate his willingness to discuss a plea. (*See Axel Decl. Dkt. 61 at ¶ 2.*)  
19 A plea offer was then made on June 16, with a one-week response deadline. (*See*  
20 *Mitchell Decl. Dkt. 50, Ex. D.*)

21 In retrospect, and given the unique circumstantial and Puig’s personal  
22 challenges, these time periods were simply too short for the defense to do a  
23 complete analysis of the facts, even of the text messages at issue, much less the two-  
24 and-a-half years of gambling and payment history that serves as the basis of Puig’s  
25 purported falsehoods. To this day, the government continues to operate under the  
26 flawed belief that the case comes down to a two-hour interview and is but “a  
27 relatively-straightforward false statement and obstruction case.” (*See Dkt. No. 121*  
28 *at 2.*) But the charges put at issue not only what was said in the interview itself but

1 what Puig remembered, which in turn puts at issue his course of conduct regarding  
2 gambling over the two-and-a-half years before the interview.

3 Despite this reality, the government gave Puig exactly one week to  
4 understand and to agree to the plea agreement's terms, including the lengthy factual  
5 basis. As Puig was weighing his options, he was also enduring a grinding work  
6 schedule 17 hours across the world in Korea and faced with the challenges of  
7 booking meetings with counsel between the challenging time zones, and having to  
8 have a Spanish translator lined up for each meeting.

9 Under these circumstances, it would have been hard for any average  
10 American to have understood the nuances of the complex plea agreement, much less  
11 the attenuated waiver section buried within the plea. But Puig is not an average  
12 American: Puig suffers from PTSD, ADHD, and executive function deficits, and has  
13 a limited educational background (even in Spanish). (*See* Sealed Declaration of Dr.  
14 Paola Suarez ("Suarez Decl.") ¶¶ 5-7.) While more detail is provided under seal, the  
15 fact of Puig's ADHD means that he is highly distractible and has difficulty paying  
16 attention and following complex verbal directions or discussions. Given this  
17 condition, he simply could not remain focused and attentive for the lengthy  
18 translation of, and discussion of, the government's plea agreement over the phone  
19 while in Korea, and his counsel and translator would have had no ability to tell when  
20 he was not focusing. In addition, Puig's executive functioning deficit, and limited  
21 education, cause him to be highly concrete in his understanding, rendering it  
22 impossible for him to evaluate and appreciate the nuance of the waiver and the  
23 factual basis to which he was purportedly agreeing. (*Id.*)

24 Ultimately, for someone with Puig's concrete mentality and limited  
25 education, the decision to enter the plea agreement came down to a harsh and  
26 immediate Hobson's choice: fight the charges, which would likely result in a foreign  
27 arrest and subsequent extradition proceedings, which would be sure to sully his  
28 professional reputation forever, or accept the government's plea offer. The Hobson-



esque nature of these two “options” was magnified by Puig’s mental condition and the post-traumatic stress disorder (“PTSD”) he suffers related to his effective kidnapping by a Mexican drug cartel to be smuggled out of Cuba. (*See* Suarez Decl. ¶ 7.) When confronted with a choice of possible international arrest and extradition reminiscent of his PTSD trigger, and signing an agreement that would avoid the trigger altogether, there was no choice at all.

To that end, the government’s contention that Puig’s attorney-client privilege should be invaded is misplaced. There is more than sufficient evidence without an *in camera* review of Puig’s attorney-client communications to find that, on June 6, 2022, the government made clear that if Puig was not interested in a plea disposition, the government would go forward with the already- approved grand jury indictment, and that DHS would put a warrant for his arrest into the system resulting in his international arrest. (*See* Axel Decl. Dkt. 61 ¶ 2; Fernandez Decl. ¶ 5 (“[b]ased on the discussion, I literally pictured Puig being arrested in the middle of a game in Korea and hauled off to jail to be extradited to the United States”). That the government’s rush to indictment presented genuine threat of international arrest and extradition is an ineluctable conclusion based on the undisputed facts, as AUSA Mitchell has himself acknowledged. (*See* Mitchell Decl. (Dkt. 50) ¶ 15 (“I confirmed . . . that an indictment could result in a foreign arrest and extradition”).<sup>6</sup>

<sup>6</sup> The government also cannot escape from the fair inference it created by suggesting that Puig’s counsel should have tried to bargain around his foreign arrest. (*Cf.* Mitchell Decl. Dkt. 50 ¶ 16.) As discussed above, the defense’s bargaining power is limited when the government controls the power of the state (and sometimes the power of a foreign state), and must carefully balance when and how it can ask for anything at all. Further, given that DOJ does not control South Korea’s Justice Department, or even the foreign affairs practices of its own constituent agencies (*see id.* ¶ 15 (Homeland Security “is required to enter arrest warrants in a central database shortly after they receive a warrant”)), it is far from clear that the government could have promised anything that would have avoided a foreign arrest if an indictment had been announced, even if it attempted to do so.

1 Given the credible threat of foreign arrest, coupled with the other unique issues  
 2 raised above, the Court should find that he could not have knowingly and  
 3 intelligently waived Rule 410.

4           3.     In Light of the Subsequently-Discovered Evidence, Puig Did Not  
 5                    Understand the Waiver or the Factual Basis and Counsel Lacked  
 6                    the Information to Advise Him

7           The fact that Puig did not fully understand the Rule 410 waiver, and its  
 8 consequences – which could include the use of the factual basis at trial – is further  
 9 evidenced by the fact that he could not and did not in fact understand the factual  
 10 basis itself, and defense counsel lacked the information adequately to advise him.

11           As an initial matter, while the government seeks to introduce the factual basis  
 12 as alleged statements against interest, in fact, the factual basis is littered with  
 13 statements for which Puig has no personal knowledge and therefore could neither  
 14 confirm nor deny. For example, the factual basis states that “Wayne Nix was a  
 15 minor league baseball player from 1995 to 2001.” It further states that, “[s]ometime  
 16 after 2001, Nix began operating an illegal bookmaking business” and created a  
 17 client list “[t]hrough contacts he had developed during his own career in  
 18 professional sports.” (*See* Mot., Appx. A.) These are facts that Puig could not have  
 19 sworn were true or not true. Having included information in the factual basis that is  
 20 beyond a defendant’s purview, it would be quite natural for any defendant to simply  
 21 tune out to the details. But here particularly, given the linguistic and cognitive issues  
 22 discussed above, including his ADHD, as well as the rushed schedule, it should not  
 23 be surprising that Puig did not have the ability, educational background, critical  
 24 thinking skills, or even the time, to begin to pick apart the government’s lengthy  
 25 statements.<sup>7</sup>

26 <sup>7</sup> The government attempts to hold the defendant to the statement in his certification  
 27 that defendant had “carefully and thoroughly discussed [the plea agreement] with  
 28 counsel.” (Mot. at 11.) This statement can be true and nevertheless, given the  
 unique circumstances discussed above, with the government exerting pressure to



Moreover, the factual basis contains purported “facts” that Puig can now disprove. (*See* March 2, 2023 *In Camera* Submission at pp. 4-9.) This proves two things: (1) that Puig did not knowingly and intelligently agree to the Rule 410 waiver and factual basis; and (2) that his counsel lacked information sufficient to advise him as to such waiver. Defense counsel certainly would not have advised Puig to agree to inaccurate or disputable statements, but, at the time of the plea discussions, counsel lacked access to the information necessary to disprove them. As set forth below, upon Puig’s return to the United States, and with direct access to Puig to help him focus on the details, to refresh his recollection with his own records, and to investigate the government’s claims, the defense discovered exculpatory evidence. The defense then asked the government for additional evidence, which further undermined the factual basis and supported Puig’s defenses, at which time he concluded that he could not enter a guilty plea.<sup>8</sup> Understanding that, in this case, the issue must be evaluated in retrospect, it is clear that counsel would not have advised Puig to agree to the factual basis as written. Because counsel did not have the information necessary to advise the defendant,<sup>9</sup> the

\_\_\_\_\_

make a quick decision while threatening immediate indictment, and evaluated against the backdrop of this defendant’s location, work, and unique personal characteristics, the specific waiver in paragraph 22 and the factual basis itself were not adequately understood.

<sup>8</sup> To support its claim that the plea agreement was knowing, the government cites certain defense letters to the USAO requesting dismissal or diversion, arguing the letters prove that “counsel and defendant” “carefully discussed this matter.” (Mot at 11 n. 5, citing Dkt. 73). But the defense letter from November 22, 2022 (*id.*, 73-1, Ex. C) proves exactly the opposite: as the letter expressly states, the evidence it references had only just come to the defense’s attention upon Puig’s return. Once the defense learned of the facts, it promptly requested dismissal. (*Id.*; *see also* Axel Decl. Dkt. 61 ¶ 4.)

<sup>9</sup> The government here too attempts to rely on counsel’s certification that she had “carefully and thoroughly discussed the plea agreement with the defendant.” (Mot.

1 defendant could not have been adequately advised. Under these circumstances, the  
2 Court should find that there was not a knowing and intelligent waiver.

3 Relatedly, the government's assertion that Puig was able to "engage in  
4 negotiations and edit [the plea agreement] to his liking" (Mot. at 14) is detached  
5 from reality and "does not reflect the reality of the bargaining table." *United States*  
6 *v. Osorto*, 445 F. Supp. 3d 103, 109 (N.D. Cal. 2020); *see United States v.*  
7 *Mezzanatto*, 513 U.S. 196, 216 (1995) (Souter, J., dissenting ) ("As the Government  
8 conceded... defendants are generally in no position to challenge demands for these  
9 waivers, and the use of waiver provisions as contracts of adhesion has become  
10 accepted practice."). In *United States v. Mutschler*, 152 F. Supp. 3d 1332, 1335-37  
11 (W.D. Wash. 2016), the court accepted the plea agreement but refused to enforce the  
12 provision that waived defendant's appellate rights as offending the basic principles  
13 of fair play. Recognizing the adhesive nature of waivers in plea agreements, the  
14 court reasoned that "the unilateral waiver at issue was neither specifically negotiated  
15 nor, in any real sense, optional." *Id.* at 1335.

16 This is decidedly true here. The Rule 410 waiver was non-negotiable, as were  
17 the alleged false statements charged, given that the government already had drafted  
18 its indictment. The defense effectively had one week to raise any issue with the plea  
19 agreement and factual basis, and it knew only limited changes to the factual basis  
20 would even be considered. The government's feigned ignorance as to the  
21 defendant's unequal bargaining power is transparent. As succinctly put by Judge  
22 Breyer:

23 \_\_\_\_\_  
24 at 6, 11.) But given the limited information available, and the government's  
25 certainty as to its charges and the facts supporting them, counsel could truthfully and  
26 in good faith make this statement in July 2022, only to later realize – in November  
27 2022 – that Puig's defenses had not been adequately explored. Again, the point of  
28 the November 22 letter and email to the USAO (Dkt. 73-1, Ex. C; Dkt. 80, Ex. 3)  
was to seek relief given that new facts undermined the premises on which counsel  
had relied in signing the certification and recommending that defendant plead guilty.

1 It is no answer to say that [defendant] is striking a deal with the  
 2 Government, and could reject this term if he wanted to, because that  
 3 statement does not reflect the reality of the bargaining table. (Citations  
 4 omitted). . . . [P]lea agreements are contracts of adhesion. The  
 5 Government offers the defendant a deal, and the defendant can take it  
 6 or leave it. *Id.* (“American prosecutors . . . choose whether to engage  
 7 in plea negotiations and the terms of an acceptable agreement.”). If he  
 8 leaves it, he does so at his peril. And the peril is real, because on the  
 9 other side of the offer is the enormous power of the United States  
 10 Attorney to investigate, to order arrests, to bring a case or to dismiss  
 11 it, to recommend a sentence or the conditions of supervised release,  
 12 and on and on.

13 *Osorto*, 445 F. Supp. 3d at 109-110 (citations omitted). As Judge Breyer concluded,  
 14 as this Court should as well, “[t]hat Faustian choice is not really a choice at all for a  
 15 man in the defendant’s shoes. But the Court has a choice, and it will not approve the  
 16 bargain.” (*Id.*)

17 Here, too, under the unique circumstances presented in this case, and  
 18 evaluated under the totality of the circumstances as to this defendant, the defendant  
 19 did not knowingly and intelligently agree to the waiver, and the Court should not  
 20 enforce the Rule 410 waiver.

21 **C. The Court Should Find That There Was No Knowing Breach Due**  
 22 **to Later-Discovered Exculpatory Evidence**

23 The Court also has discretion not to enforce the waiver because the defendant  
 24 would not have signed it had he known of the exculpatory evidence that was not  
 25 discovered until November 2022. Again, the government’s motion should be  
 26 rejected because the plea agreement was never entered in open court and accepted  
 27 by this Court. But even if defendant had entered a guilty plea and the Court had  
 28 accepted the plea agreement, this Court could decline to enforce the Rule 410  
 waiver against him on the basis of new exculpatory evidence.

This is precisely what happened in *United States v. Newbert (Newbert III)*,  
 504 F.3d 180 (1st Cir. 2007). After entering a guilty plea pursuant to an agreement,  
 the defendant withdrew his plea based on new evidence of innocence, and the  
 government claimed he was in breach of his plea agreement and thus had waived

1 Rule 410. *Id.* at 183 (citing *U.S. v. Newbert (Newbert II)*, 477 F. Supp. 2d 287, 292  
 2 (D. Me. 2007)). The Court of Appeals affirmed the district court’s ruling that the  
 3 Rule 410 waiver in the plea agreement was unenforceable, finding that withdrawal  
 4 of a plea due to post-plea evidence of innocence does not constitute a breach. *Id.* at  
 5 187; *see also Newbert II*, 477 F. Supp. 2d at 292 (if circumstances “present at least a  
 6 plausible claim of actual innocence from evidence obtained after the guilty plea...  
 7 the defendant cannot have breached the plea agreement by [withdrawal]).<sup>10</sup>

8 Here, as in *Newbert*, Puig and the defense team only determined that he could  
 9 not go through with the plea agreement after learning facts that substantially  
 10 affected the basis upon which he agreed to plead guilty. Because Puig did not enter  
 11 a plea, the facts here are indeed stronger than *Newbert*, where the Court had  
 12 accepted the plea agreement and nevertheless set it aside. Here, Puig had merely  
 13 signed an agreement that he never would have signed “since this new evidence  
 14 would likely have substantially affected his decision to enter the plea agreement in  
 15 the first place.” *Newbert II*, 477 F. Supp. 2d at 293.<sup>11</sup> As the court affirmed there,  
 16 and as this court also should find, there was no knowing breach, and there should be

18 <sup>10</sup> Similarly, in *Mutschler*, the Court struck the unilateral waiver from the plea  
 19 agreement holding that it could not conclude that defendant “‘voluntarily,  
 20 knowingly, and intelligently’ waiv[ed] his right to appeal the sentence” reasoning  
 21 that prospective waivers are inherently unknowing. 152 F. Supp. 3d at 1338-39, 41.  
 22 Here too, the facts in control of the government that were later revealed to provide  
 Puig with factual innocence defense renders the purported waiver unknowing.

23 <sup>11</sup> The First Circuit in *Newbert* rejected the government’s overzealous argument that  
 24 if there is no sanction against a defendant who withdraws a guilty plea, the  
 25 government would not enter into pleas and take every case to trial. *Newbert III*, 504  
 26 F.3d at 187. This case differs from *Newbert* in this respect because Puig never  
 27 entered a plea so the “fair and just” standard under Fed.R.Civ.P. 32(e) is not at issue.  
 28 Like *Newbert*, however, the defense has shown newly-discovered evidence it did not  
 have at the time of the plea agreement. (*See* March 2, 2023 *In Camera* Submission  
 at pp. 4-9, Attachments 2-4).

1 no Rule 410 waiver: “Ultimately, because a man’s reputation and freedom hang in  
 2 the balance... the better course is to allow a jury to determine whether he is guilty—  
 3 as he admitted he was—or not guilty—as he now insists he is.” *Newbert I*, 471 F.  
 4 Supp. 2d at 199.

5 **D. The Court Should Exclude the Factual Basis Under Rule 403**  
 6 **Because It Would Result in a “Trial Within a Trial” Concerning**  
 7 **the Plea Discussions**

8 Federal Rule of Evidence 403 (“Rule 403”) gives the Court discretion to  
 9 “exclude relevant evidence if its probative value is substantially outweighed by a  
 10 danger of . . . confusing the issues, misleading the jury, undue delay, wasting time,  
 11 or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. Where evidence  
 12 would cause a trial within a trial that would waste time and confuse the jury, it can  
 13 be excluded. *United States v. Singh*, 995 F.3d 1069, 1080-81 (9th Cir. 2021) (cross-  
 14 examination precluded that would “confus[e] the issues before the jury and wast[e]  
 15 time with a mini-trial”); *AGA & Titan Inc. v. United Specialty Ins. Co.*, 2012 WL  
 16 4783636, at \*4 (Oct. 12, 2021, C.D. Cal.) (evidence excluded under Rule 403  
 17 because it risked creating a “case-within-a-case” that would waste time); *United*  
 18 *States v. Barnard*, 490 F.2d 907, 912 (9th Cir. 1973) (evidence excluded because it  
 19 might “produce a trial within a trial” on “a collateral but still an important matter”).

20 The government maintains that Rule 403 is “inapplicable” because Puig  
 21 waived his right to “any claim under . . . any other federal rule, that the statements  
 22 or any evidence derived from the statements . . . are inadmissible.” (Mot. at 15,  
 23 citing plea agreement ¶ 22). But Rule 403 is not a rule of admissibility; rather, the  
 24 rule permits a district court to exclude even otherwise admissible and relevant  
 25 evidence. *United States v. Cruz-Garcia*, 344 F.3d 951, 956 (9th Cir. 2003)  
 26 (explaining that “even though evidence is admissible under 404(b), it may  
 27 nonetheless be excluded under Rule 403’s balancing test”); *United States v. Two*  
 28 *Eagle*, 633 F.2d 93, 96 (8th Cir. 1980) (“Evidence otherwise admissible under Rule



1 404(b) may be excluded, under Fed.R.Evid. 403”). Therefore, Rule 403 is not  
2 encompassed within the waiver in paragraph 22 of the plea agreement.

3 Indeed, the defense believes that the government can never exact a bargain  
4 that would deprive a Court of its plenary discretion under Rule 403, as the plea  
5 agreement itself recognizes by referencing only rules of admissibility. But to the  
6 extent the government nevertheless argues that Rule 403 is encompassed in  
7 paragraph 22, the Court may also reject the government’s argument on the basis that  
8 the paragraph does not cite Rule 403 and ambiguities are construed in the  
9 defendant’s favor. *United States v. Heredia*, 768 F.3d 1220, 1230 (9th Cir. 2014);  
10 *United States v. Franco-Lopez*, 312 F.3d 984, 989 (9th Cir. 2002) (the government  
11 ordinarily assumes “responsibility for any lack of clarity”).

12 1. The Factual Basis has Little to No Probative Value.

13 Contrary to the government’s claim, the probative value of the factual basis is  
14 extremely minimal. The factual basis is clearly a document that the government  
15 drafted and reflects their view of events. It will be clear to any reasonable juror that  
16 it was a contract of adhesion. *See Osorto*, 445 F.Supp.3d at 109 (“Plea agreements  
17 are contracts of adhesion.”); *Mutschler*, 152 F.Supp.3d at 1335 (same). Unlike a  
18 spontaneous confession, or a defendant’s written or oral statement, the factual basis  
19 is not from defendant’s own words and clearly does not represent the way he would  
20 talk or what he would say -- in tone, words, or substance. As to the three alleged  
21 false statements, the jury will know that defendant disputes them, and will hardly  
22 find it persuasive of his guilt on those same alleged false statements that he signed  
23 onto a government form to avoid foreign arrest.

24 *United States v. Sua*, 307 F.3d 1150, 1153 (9th Cir. 2002), is instructive  
25 regarding the probative value of plea agreements. In *Sua*, a co-defendant had agreed  
26 to plead guilty in exchange for the dismissal of counts. *Id.* at 1152. Defendant Sua  
27 then sought to introduce the co-defendant’s plea agreement to show “that the plea  
28 agreement was an admission by the government that [the co-defendant] was not

1 guilty” of the dismissed counts. *Id.* The court found the plea agreement was  
 2 properly excluded under Rule 403 “because its low probative value is substantially  
 3 out-weighed by ‘confusion of the issues, or misleading the jury, or by considerations  
 4 of undue delay.’” *Id.* at 1153. As part of this analysis, the court explained that  
 5 “many factors influence the government’s decision to plea bargain.” *Id.*; *see also*  
 6 *United States v. Delgado*, 903 F.2d 1495, 1499 (1990).

7 Many factors also influence a defendant’s decision to plea bargain. *See, e.g.*,  
 8 *Corbitt v. New Jersey*, 439 U.S. 212, 222 n.12 (1978) (collecting reasons). Here,  
 9 evidence would show that Puig’s decision to attest to the statements within the  
 10 factual basis was due to (1) the government’s messaging that he needed to sign or  
 11 face international arrest, and (2) the short window of time the government set that,  
 12 given the unique circumstances of Puig’s foreign residence, job, mental health  
 13 issues and learning disabilities, eliminated a meaningful opportunity to vet plausible  
 14 defenses. The jury, when shown evidence that contradicts the “facts” in the factual  
 15 basis, will be able to easily infer Puig’s reasons for signing. Like *Sua*, the factual  
 16 basis here then has low probative value on the issue of guilt or innocence as to the  
 17 charged offenses.

18 2. The Dangers Listed in Rule 403 Substantially Outweigh the  
 19 Probative Value of the Factual Basis.

20 The government suggests that the dangers listed in Rule 403 do not  
 21 substantially outweigh the factual basis’s probative value. The government  
 22 contends that the factual basis would not confuse or mislead the jury because “the  
 23 government will not inform the jury that the [f]actual [b]asis was part of any plea  
 24 agreement in its case-in-chief.” (Mot. at 15.) But the defense would offer the  
 25 context of the factual basis to explain it, as Rule 410(a) expressly permits. Rule  
 26 410(a) (“In a civil or criminal case, evidence of the following is not admissible  
 27 *against the defendant* who made the plea or participated in the plea discussions.”)  
 28 (emphasis added); *United States v. Biaggi*, 909 F.2d 662, 690 (1990) (“[P]lea

1 negotiations are inadmissible ‘against the defendant’ . . . and it does not necessarily  
 2 follow that the Government is entitled to a similar shield.”); *United States v. Maloof*,  
 3 205 F.3d 819, 824-25 (5th Cir. 2000) (affirming admission of testimony offered by  
 4 the defendant to show that he rejected offers of immunity because Rule 410 does not  
 5 shield the government).<sup>12</sup>

6 Accordingly, should the government offer the factual basis, Puig would not be  
 7 precluded from offering plea discussion evidence, which is highly probative value of  
 8 his mental state during such discussions. *See, e.g., Biaggi*, 909 F.2d at 690. It  
 9 would take considerable time to give the jury context of why Puig signed, and  
 10 would waste the jury’s time and cause confusion over the issues the jury must  
 11 resolve. Relevant aspects of this “mini-trial” would include statements attorneys  
 12 made across the bargaining table, which would not be desirable and would cause the  
 13 jury confusion. *See, e.g. United States v. DeMarco*, 407 F.Supp. 107, 114 (C.D.  
 14 Cal. 1975) (excluding evidence because it “would involve the testimony of three  
 15 attorneys in the case” that would lead to the lawyers arguing for their own  
 16 credibility in closing arguments, and “[n]othing could be more likely to distract the  
 17 jury from a focus on the evidence”). The defense might also need additional fact  
 18 witnesses, and would need to prepare a different line of expert inquiry to apply  
 19 Puig’s unique mental health and cognitive issues to the plea discussion context.

20 As such, a trial-within-a-trial would be created over one piece of evidence  
 21 that carries little weight, distracting from the jury’s primary job of resolving the  
 22 charges presented, and would considerably lengthen the trial. *See e.g., AGA &*  
 23

24 \_\_\_\_\_  
 25 <sup>12</sup> Rule 410 further provides that, if one statement made during plea discussions is  
 26 admitted, other statements made during the plea discussions are also admissible.  
 27 Fed. R. Evid. 410(b)(1) (“The court may admit a statement described in Rule  
 28 410(a)(3) or (4) . . . in any proceeding in which another statement made during the  
 same plea or plea discussions has been introduced, if in fairness the statements  
 ought to be considered together.”).



1 *Titan*, 2012 WL 4783636 at \*4 (excluding evidence under Rule 403 because it  
2 would risk creating a “case-within-a-case” that would waste time). The dangers  
3 associated with admitting the factual basis therefore substantially outweigh any  
4 probative value the factual basis has.

5 These problems would not be avoided were the Court to restrict the use of the  
6 evidence to impeachment. For example, under Fed R. Evid. 613(b), if the factual  
7 basis is used to impeach Puig, Puig must be “given an opportunity to explain or  
8 deny the statement and an adverse party is given an opportunity to examine the  
9 witness about it.” *See United States v. Cutler*, 676 F.2d 1245, 1249 (9th Cir. 1982)  
10 (“Rule 613(b) requires that . . . the opposite party must be afforded the opportunity  
11 to interrogate him thereon[.]”) (cleaned up); *In re Corrugated Container Antitrust*  
12 *Litigation*, 756 F.2d 411, 415 (5th Cir. 1985) (same) As such, even if only utilized  
13 to impeach, admitting the factual basis would still lead to a trial-within-a-trial.

14 Whether used affirmatively or for impeachment, the Court has discretion to  
15 exclude otherwise admissible evidence under Rule 403, *United States v. Cruz-*  
16 *Garcia*, 344 F.3d 951, 956 (9th Cir. 2003) (“403 is, in a sense, incorporated into *all*  
17 other rules of evidence”); *United States v. Young*, 248 F.3d 260, 268 (4th Cir. 2001)  
18 (impeachment evidence subject to Rule 403), and should use such discretion here.

#### 19 **IV. CONCLUSION**

20 For the reasons discussed above, Puig respectfully requests that this Court  
21 find that the plea agreement is unenforceable, which ends the issue. In the  
22 alternative, Puig requests that the Court find that he did not knowingly waive Rule  
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1 410, or knowingly breach the plea agreement and/or exclude the factual basis from  
2 evidence pursuant to Rule 403.

3 DATED: July 5, 2023

WAYMAKER LLP

4  
5  
6 By: 

KERI CURTIS AXEL

JOSE R. NUÑO

EMILY R. STIERWALT

*Attorneys for Defendant Yasiel Puig Valdes*

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11 Facsimile: (424) 652-7850

12 *Attorneys for Defendant*  
13 *Yasiel Puig Valdes*

14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 YASIEL PUIG VALDES,

20 Defendant.

Case No. CR 22-394-DMG

**DECLARATION OF KERI CURTIS  
AXEL IN SUPPORT OF YASIEL  
PUIG'S OPPOSITION TO  
GOVERNMENT'S MOTION FOR  
ORDER RE ADMISSION OF  
FACTUAL BASIS**

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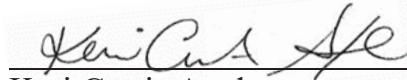
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1 as Exhibit C is a excerpted copy of Puig's Korean baseball schedule and game  
2 results from May 24, 2022 through July 9, 2022 that I obtained from the internet.

3 I declare under penalty of perjury under the laws of the United States of  
4 America that the foregoing is true and correct.

5 Executed on this 5th day of July, 2023, at Los Angeles, California.

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8 Keri Curtis Axel

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WAYMAKER

# EXHIBIT A

**United States Department of Justice****United States Attorney's Office  
Central District of California**

Jeff Mitchell  
Phone: (213) 894-0698  
E-mail: [jeff.mitchell@usdoj.gov](mailto:jeff.mitchell@usdoj.gov)

1100 United States Courthouse  
312 North Spring Street  
Los Angeles, California 90012

May 9, 2022

VIA E-MAIL

Yasiel Puig  
c/o Scott Lesowitz  
Lesowitz Gebelin LLP  
8383 Wilshire Boulevard, Suite 800  
Beverly Hills, California 90211

Re: **Federal Criminal Investigation**

Dear Mr. Puig:

This letter is to inform you that you are the target of a federal criminal investigation being conducted by the Department of Homeland Security, the Internal Revenue Service-Criminal Investigations, and the United States Attorney's Office for the Central District of California. The investigation involves false statements to law enforcement officers, in violation of 18 U.S.C. § 1001; and obstruction of justice, in violation 18 U.S.C. § 1503(a).

If you have any questions or would like to further discuss this matter, please contact us or ask your attorney to contact us by May 25, 2022.

Very truly yours,

A handwritten signature in blue ink that reads "Jeff P. Mitchell".

JEFF MITCHELL  
Assistant United States Attorney  
Major Frauds Section

# EXHIBIT B



**From:** [Keri Axel](#)  
**To:** [Riley Smith](#)  
**Subject:** Fw: Factual Basis/Fine  
**Date:** Monday, June 26, 2023 10:45:15 AM  
**Attachments:** [image001.png](#)  
[Plea Agreement Puig\\_v3\\_second revised\\_07062022.pdf](#)  
[Puig Exhibit.pdf](#)

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**From:** Mitchell, Jeff (USACAC) 5 <Jeff.Mitchell@usdoj.gov>  
**Sent:** Wednesday, July 6, 2022 3:51 PM  
**To:** Keri Axel <kaxel@waymakerlaw.com>  
**Cc:** Boyle, Daniel (USACAC) <Daniel.Boyle2@usdoj.gov>  
**Subject:** RE: Factual Basis/Fine

Hi Keri. Please find attached a newly revised plea agreement that incorporates your requests from last month and a lower fine amount (\$55,000). This plea offer will expire at the close of business on Friday.

---

**From:** Mitchell, Jeff (USACAC) 5  
**Sent:** Monday, June 27, 2022 3:55 PM  
**To:** Keri Axel <kaxel@waymakerlaw.com>  
**Subject:** RE: Factual Basis/Fine

Hi Keri. Please find attached a revised plea agreement that incorporates most of your requests, including the portion of the factual basis that described Mr. Puig's statements about "wasting his time."

---

**From:** Keri Axel <[kaxel@waymakerlaw.com](mailto:kaxel@waymakerlaw.com)>  
**Sent:** Friday, June 24, 2022 8:45 AM  
**To:** Mitchell, Jeff (USACAC) 5 <[jmitchell5@usa.doj.gov](mailto:jmitchell5@usa.doj.gov)>  
**Subject:** [EXTERNAL] Factual Basis/Fine

Hi Jeff: Per our conversation, here are requested edits to the Factual Basis and Information. Let's discuss after you review.

As to the fine, we request a mid-range Guidelines fine. Even if you apply the guidelines range that would be applicable to 1503, at most the range is \$5500-\$55,000. We request a mid-point fine of \$30,250.

We also need to further discuss cooperation. Let me know when you are available.

Thank you. Best, Keri

**Keri Curtis Axel**  
Partner



Waymaker LLP  
o +1 424.652.7800  
m +1 213 314 5284  
[kaxel@waymakerlaw.com](mailto:kaxel@waymakerlaw.com) | [waymakerlaw.com](http://waymakerlaw.com)

\*\*\*\*\*

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\*\*\*\*\*

# EXHIBIT C

MyKBO Stats

Teams ▾

Schedule

Statistics

Foreign Players

Search for player

## KBO Schedule & Results

← Kiwoom Heroes ▾ 05/24/2022 📅 →

Tuesday May 24, 2022

Kiwoom Heroes  **6 : 4**  LG Twins  
Final

Wednesday May 25, 2022

Kiwoom Heroes  **10 : 5**  LG Twins  
Final

Thursday May 26, 2022

Kiwoom Heroes  **12 : 5**  LG Twins  
Final

Friday May 27, 2022

Kiwoom Heroes  **8 : 0**  Lotte Giants  
Final

Friday May 27, 2022

Kiwoom Heroes  **6 : 3**  Lotte Giants  
Final/10

Saturday May 28, 2022

Kiwoom Heroes  **4 : 0**  Lotte Giants  
Final

MyKBO Stats

Teams ▾

Schedule

Statistics

Foreign Players

Search for player

## KBO Schedule & Results

◀ Kiwoom Heroes ▼ 05/31/2022 📅 ▶

Tuesday May 31, 2022

Samsung Lions  **2 : 3**  Kiwoom Heroes  
 Final

Wednesday June 1, 2022

Samsung Lions  **4 : 2**  Kiwoom Heroes  
 Final

Thursday June 2, 2022

Samsung Lions  **5 : 6**  Kiwoom Heroes  
 Final

Friday June 3, 2022

Kiwoom Heroes  **2 : 14**  Hanwha Eagles  
 Final

Saturday June 4, 2022

Kiwoom Heroes  **4 : 3**  Hanwha Eagles  
 Final/10

Sunday June 5, 2022

Kiwoom Heroes  Canceled  
 Rained Out  Hanwha Eagles

MyKBO Stats	Teams ▾	Schedule	Statistics	Foreign Players	Search for player
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## KBO Schedule & Results

←

Kiwoom Hero 

▾

06/07/2022 



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Tuesday June 7, 2022

KT Wiz  **0 : 3**  Kiwoom Heroes  
Final

Wednesday June 8, 2022

KT Wiz  **5 : 5**  Kiwoom Heroes  
Final/12

Thursday June 9, 2022

KT Wiz  **7 : 1**  Kiwoom Heroes  
Final

Friday June 10, 2022

Kiwoom Heroes  **10 : 6**  Kia Tigers  
Final

Saturday June 11, 2022

Kiwoom Heroes  **2 : 5**  Kia Tigers  
Final

Sunday June 12, 2022

Kiwoom Heroes  **10 : 8**  Kia Tigers  
Final

MyKBO Stats	Teams ▾	Schedule	Statistics	Foreign Players	Search for player
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## KBO Schedule & Results

Tuesday June 14, 2022

Doosan Bears  **0 : 2**  Kiwoom Heroes  
Final

☰	← Schedule	🏠	↺	⋮
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← Kiwoom Herc ▾ 06/14/2022 📅 →

Thursday June 16, 2022

Doosan Bears  **2 : 6**  Kiwoom Heroes  
Final

Friday June 17, 2022

LG Twins  **4 : 2**  Kiwoom Heroes  
Final/10

Friday June 17, 2022

LG Twins  **0 : 2**  Kiwoom Heroes  
Final

Saturday June 18, 2022

LG Twins  **4 : 2**  Kiwoom Heroes  
Final/10

MyKBO Stats

Teams ▾

Schedule

Statistics

Foreign Players

Search for player

# KBO Schedule & Results

← Kiwoom Heroe ▾ 06/21/2022 📅 →

## Tuesday June 21, 2022

Kiwoom Heroes  **4 : 3**  Samsung Lions  
Final

## Wednesday June 22, 2022

Kiwoom Heroes  **6 : 0**  Samsung Lions  
Final

## Thursday June 23, 2022

Kiwoom Heroes  **6 : 1**  Samsung Lions  
Final

## Friday June 24, 2022

Kiwoom Heroes  **1 : 5**  Lotte Giants  
Final

## Saturday June 25, 2022

Kiwoom Heroes  **13 : 5**  Lotte Giants  
Final

## Sunday June 26, 2022

Kiwoom Heroes  **9 : 4**  Lotte Giants  
Final



MyKBO Stats	Teams ▾	Schedule	Statistics	Foreign Players	Search for player
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## KBO Schedule & Results

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←	Kiwoom Hero	▼	06/28/2022	📅	→
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Wednesday June 29, 2022

Kia Tigers  **0 : 1**  Kiwoom Heroes  
Final

Thursday June 30, 2022

Kia Tigers  **4 : 5**  Kiwoom Heroes  
Final

Friday July 1, 2022

Hanwha Eagles  **5 : 7**  Kiwoom Heroes  
Final

Friday July 1, 2022

Hanwha Eagles  **0 : 3**  Kiwoom Heroes  
Final

Saturday July 2, 2022

Hanwha Eagles  **1 : 2**  Kiwoom Heroes  
Final

MyKBO Stats

Teams ▾

Schedule

Statistics

Foreign Players

Search for player

# KBO Schedule & Results

## Tuesday July 5, 2022

Kiwoom Heroes  **4 : 3**  Doosan Bears  
Final



← Schedule



Kiwoom Herc ▾



07/05/2022



## Thursday July 7, 2022

Kiwoom Heroes  **2 : 4**  Doosan Bears  
Final

## Friday July 8, 2022

NC Dinos  **2 : 3**  Kiwoom Heroes  
Final

## Friday July 8, 2022

NC Dinos  **1 : 10**  Kiwoom Heroes  
Final

## Saturday July 9, 2022

NC Dinos  **0 : 2**  Kiwoom Heroes  
Final

1 Keri Curtis Axel (Bar No. 186847)  
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3 Jose R. Nuño (Bar No. 312832)  
4 jnuno@waymakerlaw.com  
5 Emily R. Stierwalt (Bar No. 323927)  
6 estierwalt@waymakerlaw.com  
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9 Los Angeles, California 90071  
10 Telephone: (424) 652-7800  
11 Facsimile: (424) 652-7850

12 *Attorneys for Defendant*  
13 *Yasiel Puig Valdes*

14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 YASIEL PUIG VALDES,

20 Defendant.

Case No. CR 22-394-DMG

**DECLARATION OF ANTHONY  
FERNANDEZ RE GOVERNMENT'S  
MOTION FOR ORDER RE  
ADMISSION OF FACTUAL BASIS**

1                                   DECLARATION OF ANTHONY FERNANDEZ

2           I, Anthony Fernandez, declare as follows:

3           1.     I am the director of All-Star Sports & Entertainment Group, a business  
4 management group for professional athletes. One of my clients is Yasiel Puig. I  
5 have personal knowledge of the facts set forth herein and if called as a witness I  
6 could and would testify competently thereto.

7           2.     On or about June 6, 2022, acting as an agent/advisor for Puig and as a  
8 translator to assist Puig and his attorneys, I participated in a Zoom meeting with  
9 Assistant United States Attorney (AUSA) Jeff Michell; AUSA Dan Boyle; HSI  
10 Special Agent Jason Canty; and IRS Special Agent Chris Seymour. Also in  
11 attendance were attorneys Keri Curtis Axel, and Jose R. Nuño from Waymaker Law  
12 on behalf of Puig.

13          3.     At the time of the meeting, Puig played baseball in Korea and did not  
14 reside in the United States. He was present via Zoom.


15          4.     During this meeting, AUSA Mitchell explained that the government  
16 was prepared to indict Puig on several charges based on an interview Puig had with  
17 the government in January 2022. The government accused Puig of making three  
18 false statements during the interview, and it indicated that it intended to indict Puig  
19 for obstruction of justice as well as making false statements. AUSA Mitchell gave  
20 a presentation as to the charges he intended to bring and the evidence that he alleged  
21 supported them.

22          5.     At the end of the meeting, AUSA Mitchell said he would wait a few  
23 days to indict the case so that Puig could discuss with his attorneys whether to try to  
24 negotiate a plea resolution of the case before he was indicted. AUSA Mitchell said  
25 that, if he Puig did not agreed to a deal, he would be indicted and the government  
26 would get a warrant for his arrest. I do not recall the exact words that he used but I  
27 have a clear recollection of the image that it left in my mind. Based on the  
28 discussion, I literally pictured Puig being arrested in the middle of a game in Korea

1 and hauled off to jail to be extradited to the United States if he did not make a deal  
2 with the government.

3 I declare under penalty of perjury under the laws of the United States of  
4 America that the foregoing is true and correct.

5 Executed on this 21 day of December, 2022, at Miami, Florida.

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Anthony Fernandez

Case 2:22-cr-00394-DMG Document 135 Filed 07/12/23 Page 1 of 20 Page ID #:1286

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13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 YASIEL PUIG VALDES,

19 Defendant.

CR No. 22-394 (A) -DMG

GOVERNMENT'S REPLY IN FURTHER  
SUPPORT OF NOTICE OF MOTION AND  
MOTION FOR ORDER RE: DEFENDANT'S  
KNOWING BREACH OF PLEA AGREEMENT

Hearing Date: July 19, 2023  
 Hearing Time: 2:30 p.m.  
 Location: Courtroom of the  
 Hon. Dolly M. Gee

22 Plaintiff United States of America, by and through its counsel  
 23 of record, the United States Attorney for the Central District of  
 24 California and Assistant United States Attorneys Jeff Mitchell and  
 25 Dan G. Boyle, hereby files this Reply in further support of its  
 26 Motion for an Order finding that defendant Yasiel Puig Valdes  
 27 knowingly breached his plea agreement with the government in this  
 28 matter.

1  
2       This Reply is based upon the attached memorandum of points and  
3 authorities, the files and records in this case, and such further  
4 evidence and argument as the Court may permit.

5  
6       Dated: July 12, 2023

Respectfully submitted,

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12                                   /s/  
13                                   \_\_\_\_\_  
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1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2       **I.       INTRODUCTION**

3           This Court held months ago that defendant breached his agreement  
4 with the government in this matter (the "Plea Agreement"), a holding  
5 which is the law of the case. Now defendant seeks to revisit that law  
6 of the case and argue that the Plea Agreement, and accordingly, the  
7 Court's order finding him in breach, are actually null and void -  
8 without so much as acknowledging the law of the case doctrine.  
9 Alternately, he argues that his execution of the Plea Agreement was  
10 not voluntary, but instead of offering a declaration from defendant  
11 himself, he seeks to evade cross-examination by offering declarations  
12 from others (his manager and a retained expert) as to what defendant  
13 might have been thinking at the time he agreed to plead guilty. But  
14 third-party speculation is no substitute for defendant's own  
15 testimony, and certainly does not overcome defendant's certifications  
16 included in the Plea Agreement. He should be held to the agreement  
17 and waivers he signed - and benefitted from - and the government's  
18 motion should be granted.

19       **II.       ARGUMENT**

20           **A.       The Law of the Case Doctrine Bars Defendant's Attempt to**  
21           **Retroactively Withdraw from the Plea Agreement**

22           On January 6, 2023, this Court found that "[d]efendant did not  
23 plead guilty, despite agreeing to do so as part of his plea, and  
24 accordingly, breached the [Plea Agreement]." ECF No. 51, at 3. While  
25 defendant opposed the government's motion for a finding of breach at  
26 that time (see ECF No. 41), at no point did defendant ever suggest  
27 that the Plea Agreement was non-binding or had been withdrawn. To the  
28 contrary, defendant strenuously argued that the Plea Agreement

1 continued to bind the government:

- 2 • "A plea agreement is a contract, to which the Court is  
3 not a party. Like any other party to a contract, to  
4 merit the Court's intervention, the government must  
5 prove the elements of a breach of contract..." (ECF No.  
6 41, at 1);
- 7 • "If the government were to seek a superseding  
8 indictment, defendant Puig would possibly have a  
9 breach motion because he would have damages . . . Like  
10 any party to a contract, however, Puig might or might  
11 not decide to assert such breach, in which case the  
12 Court might never be asked to intervene" (id., at 6-  
13 7);
- 14 • "[T]he defense may seek rescission of the plea  
15 agreement, or at least may ask the Court not to grant  
16 the government specific enforcement of paragraph 22,  
17 asserting contractual defenses such as  
18 unconscionability, public policy, undue influence,  
19 nondisclosure, or mistake." Id. at 8.

20 In sum, defendant argued that (1) contract law governed the Plea  
21 Agreement, (2) the Court was not a party to the Plea Agreement, and  
22 (3) that the government remained bound by the Plea Agreement until it  
23 could establish the elements of a breach. The Court agreed with  
24 defendant in part, for example, agreeing that "[u]ntil the Government  
25 is so relieved, it is bound by its obligation not to prosecute  
26 Defendant for obstruction of justice" (ECF No. 51, at 3), but  
27 ultimately held that defendant had breached the plea Agreement. Id.  
28 Accordingly, that holding is the law of the case here.

29 The law of the case doctrine "generally provides that when a  
30 court decides upon a rule of law, that decision should continue to  
31 govern the same issues in subsequent stages in the same case." Askins  
32 v. U.S. Dep't of Homeland Sec., 899 F.3d 1035, 1042 (9th Cir. 2018)  
33 (cleaned up). Under the doctrine, courts are "generally precluded

1 from reconsidering an issue that has already been decided by the same  
2 court, or a higher court in the identical case, absent a material  
3 change in circumstances.” Thomas v. Bible, 983 F.2d 152, 154 (9th  
4 Cir. 1993). “For the doctrine to apply, the issue in question must  
5 have been decided either expressly or by necessary implication in the  
6 previous disposition.” Id. (internal quotation marks and alterations  
7 omitted). If an issue has already been decided, then reconsideration  
8 of the order is permitted only where “the prior decision is ‘clearly  
9 erroneous’ and enforcing it would create ‘manifest injustice’;  
10 intervening, controlling authority encourages reconsideration; or  
11 substantially different evidence is produced at a later merits  
12 trial.” East Bay Sanctuary Covenant v. Trump, 950 F.3d 1242, 1262  
13 (9th Cir. 2020).

14 Defendant ignores the law of the case doctrine, and instead,  
15 suggests that the Court should “amend” its prior order. See Opp. at  
16 9. Defendant does not address the standard for revisiting the law of  
17 the case, or argue how he has met this standard,<sup>1</sup> but even if he had,  
18 defendant could not show a manifest injustice here. First, as  
19 addressed herein, defendant’s new argument that the Plea Agreement  
20 was non-binding are not “intervening, controlling law,” because they  
21 long predate the Court’s breach order and ignore subsequent and  
22 binding Supreme Court precedent. See Section II. B, infra. Second,  
23 defendant cannot show a manifest injustice in adhering to the law of  
24 the case here, because he received at least some of the benefit of  
25

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26 <sup>1</sup> Defendant suggests in a footnote that his counsel simply  
27 didn’t know about this case law at the time (Opp. at 8 n.4), but does  
28 not explain why his counsel’s purported ignorance of the law would  
satisfy the law of the case doctrine.

1 the bargain he sought through the Plea Agreement. As discussed below,  
2 see Section II.C, infra, defendant's primary contention is that he  
3 faced a "Hobson's choice" (Opp. at 12) between going to trial or  
4 accepting a plea agreement that would allow him to finish his  
5 professional baseball season in South Korea without fear of arrest or  
6 extradition. See Opp. at 12-13. Of course, defendant was able to  
7 complete his baseball season without arrest because he signed the  
8 Plea Agreement and, as detailed in prior filings, persuaded the  
9 government to keep the matter under seal until his voluntary return.  
10 But once the baseball season was complete, defendant changed his  
11 position and refused to plead guilty as he had promised to do -  
12 leading to the Court's finding of breach. There is no manifest  
13 injustice in refusing to allow defendant to change his position after  
14 he already received one of the very benefits he sought.

15 **B. Defendant's New Arguments Ignore Intervening Supreme Court**  
16 **Precedent**

17 Separate from the law of the case doctrine, defendant's new  
18 attempt to invalidate the waivers in the Plea Agreement relies on  
19 prior law which has since been undermined by intervening Supreme  
20 Court precedent.

21 In his Opposition, defendant now argues that "[t]he Ninth  
22 Circuit has repeatedly held that a plea agreement that has not been  
23 offered in open court and approved by the Court - like the one here -  
24 - is unenforceable." Opp. at 1. Defendant largely relies on two  
25 earlier Ninth Circuit cases for this proposition: United States v.  
26 Fagan, 996 F.2d 1009, 1013 (9th Cir. 1993) and United States v.  
27 Savage, 978 F.2d 1136, 1138 (9th Cir. 1992). A close reading of this  
28

1 precedent, and intervening Supreme Court jurisprudence, shows that  
2 the Fagan/Savage line of cases does not support defendant's position.

3 For example, as defendant recognizes, Fagan explicitly rested on  
4 the Supreme Court's decision in Mabry v. Johnson, 467 U.S. 504, 507-  
5 08 (1984)). See Opp. at 6. What defendant omits, however, is that  
6 Mabry was largely relegated to dicta and implicitly overruled by the  
7 Supreme Court in Puckett v. United States, 556 U.S. 129, 138 (2009)  
8 ("We disavow any aspect of the Mabry dictum that contradicts our  
9 holding today."). In Puckett, the Supreme Court forcefully reiterated  
10 that plea agreements - including failures to perform - are governed  
11 by contract law:

12 Although the analogy may not hold in all respects, plea  
13 bargains are essentially contracts. When the consideration  
14 for a contract fails—that is, when one of the exchanged  
15 promises is not kept—we do not say that the voluntary  
16 bilateral consent to the contract never existed, so that it  
17 is automatically and utterly void; we say that the contract  
18 was broken. The party injured by the breach will generally  
19 be entitled to some remedy, which might include the right  
20 to rescind the contract entirely, but that is not the same  
21 thing as saying the contract was never validly concluded.

22 Puckett, 556 U.S. at 137 (internal citations omitted). The government  
23 respectfully submits that Puckett is binding here: where a defendant  
24 refuses to plead guilty as agreed, the contract has been breached -  
25 it does not become "automatically and utterly void." Id.<sup>2</sup> While the

26 <sup>2</sup> Similarly, defendant's reliance on Savage is misplaced. As  
27 defendant acknowledges, Savage adopted the Fifth Circuit's reasoning  
28 in United States v. Ocanas, 628 F.2d 353 (5th Cir. 1980). See Opp. at  
8. Again, defendant omits key subsequent history: Ocanas was  
recognized by the Fifth Circuit as overruled by the Supreme Court's  
decision in United States v. Hyde, 520 U.S. 670 (1997). See United  
States v. Grant, 117 F.3d 788, 791 n.4 (5th Cir. 1997) ("[M]ore  
importantly, [Ocanas] is undermined by the Supreme Court's decision  
in Hyde.").

(footnote cont'd on next page)

1 non-breaching party may opt to "rescind the contract entirely," that  
2 is merely one remedy available. Id.

3 Read in context with Puckett, the Fagan/Savage line of cases  
4 stand for the narrower proposition that "a court cannot force a  
5 defendant to plead guilty because of a promise in a plea agreement."  
6 Savage, 978 F.2d 1136, 1137 (9th Cir. 1992) (internal citation  
7 omitted). Of course, that is not the issue here, where the question  
8 is whether terms of a plea agreement ancillary to the agreement to  
9 plead guilty remain in force.

10 Furthermore, the circumstances expressed in Savage - that  
11 "neither party contemplates any benefit from the agreement unless and  
12 until the trial judge approves the bargain and accepts the guilty  
13 plea" (978 F.2d at 1138) - are not present with defendant's plea  
14 agreement. Here, the Plea Agreement states that "that the Court and  
15 the United States Probation and Pretrial Services Office are not  
16 parties to this agreement," and that the Plea Agreement is effective  
17 "upon signature and execution of all required certifications by  
18 defendant, defendant's counsel, and an Assistant United States  
19 Attorney." See ECF 6 ¶¶ 20, 23. In other words, however the  
20 Fagan/Savage line of cases may be construed, defendant here  
21 specifically agreed that terms of the Plea Agreement would be binding  
22 upon signing. He should be held to the terms he agreed to.

23  
24  
25  
26 Defendant actually cites to Hyde, but fails to grasp the  
27 significance of its holding; in Hyde the Supreme Court held that a  
28 rejected plea is not void ab initio, but rather gives the defendant  
"the right to back out of his promised performance." See Opp. at 7  
(citing Hyde, 520 U.S. 677-78).

**C. Defendant has Failed to Rebut the Certifications of Voluntariness he Signed in the Plea Agreement**

As an initial matter, defendant largely evades the principle question of whether his breach of the Plea Agreement was knowing. See generally, Mot. at 10-11. Defendant has offered no direct evidence of his state of mind or identified any specific provisions of the plea agreement that he claims he did not comprehend. Instead, defendant largely attacks the Plea Agreement and included waivers generally, arguing that his "mental health and cognitive-educational deficits, created a perfect storm in which he did not have the ability to knowingly and intelligently waive his Rule 410 right." Opp. at 9. Accordingly, to the extent the Court finds that defendant voluntarily entered the Plea Agreement and included waivers, defendant has offered no facts or evidence to dispute that his breach was "knowing" under Paragraph 22 of the same.

Not only has defendant failed to offer any evidence to suggest that he did not fully comprehend or appreciate the plea agreement, defendant and his counsel certified in writing that defendant had reviewed the terms of the Plea Agreement, that he understood those terms, and that he was freely entering into an agreement to plead guilty, and that no one had "threatened or forced [defendant] in any way to enter into [the Plea Agreement]." See ECF No. 6, at 19-20. In his Opposition, defendant does not dispute that he signed the Plea Agreement or the accompanying certifications. Nor does he dispute that that Plea Agreement and certifications were accurately translated for him. And most notably, defendant does not offer any declaration of his own contradicting these certifications - or any



1 declaration at all.<sup>3</sup>

2       Instead of offering a declaration from defendant, or any direct  
3 evidence of defendant's state of mind at the time he signed the plea  
4 agreement, defendant's Opposition includes statements from other  
5 persons offering their opinions that defendant might not have entered  
6 the Plea Agreement voluntarily. For example, defendant offers a  
7 declaration from his manager, Anthony Fernandez, stating that he  
8 "literally pictured Puig being arrested in the middle of a game in  
9 Korea and hauled off to jail to be extradited to the United States if  
10 he did not make a deal with the government." See ECF No. 128-5, at  
11 ¶ 5. But defendant's manager is not the defendant and cannot testify  
12 to defendant's mental state - and notably, Mr. Fernandez says nothing  
13 about any conversations he may have had with defendant on this point,  
14 only his own subjective impression, and Mr. Fernandez does not (and  
15 cannot) state that he was present for all conversations between the

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17       <sup>3</sup> Defendant's decision not to offer any testimony of his own  
18 appears calculated to avoid cross-examination on the assertions  
19 offered by others in his place. For example, in the Opposition,  
20 defendant argues that he "is highly distractible and has difficulty  
21 paying attention and following complex verbal directions or  
discussions." Opp. at 12. However, at least two of defendant's former  
hitting coaches have expressed that they had no difficulty  
communicating with or instructing defendant. See Decl. of AUSA Dan  
Boyle, Exs. A, B.

22       As another example, defendant asserts that he had insufficient  
23 time to consider the proposed plea agreement because he only had  
"initially one week (June 16-June 23), a period in which he had a  
24 travel day and a double-header" to consider it. See Opp. at 4, n.1.  
25 However, the same publicly available Korean Baseball League database  
cited by defendant (MyKBOstats.com) shows that defendant was only on  
the game roster for a single game during this period (June 16, 2022),  
and did not actually play that day. See Decl. of AUSA Dan Boyle, Ex.  
26 C. For each other game during this period (including the mentioned  
double-header), these records indicate that defendant did not play at  
27 all. According to defendant's own cited source, the first game he  
appeared for after June 16, 2022 was on July 7, 2022 - roughly the  
28 same day he signed the Plea Agreement. See Boyle Decl. ¶ 4.

1 government and defense counsel where the Plea Agreement was  
2 discussed.<sup>4</sup>

3 Similarly, the Opposition attaches a declaration from Dr. Paola  
4 Suarez, stating that, based on her examination, defendant "suffers  
5 from PTSD, ADHD, and executive function deficits, and has a limited  
6 educational background." Opp. at 12. Dr. Suarez, however, does not  
7 opine that defendant did not understand the plea agreement or that  
8 his signature was not voluntary. Dr. Suarez merely diagnoses  
9 defendant and opines that people with his condition are easily  
10 distracted and may have difficulty following conversations. Further,  
11 Dr. Suarez's declaration, and the Opposition as a whole, fail to  
12 identify any specific provisions of the Plea Agreement that defendant  
13 did not comprehend. Whatever the strength of Dr. Suarez' diagnosis,  
14 however, her opinion of how defendant might have reacted is no  
15 substitute for defendant's own testimony - particularly where  
16 defendant already signed certifications to the contrary.

17 Defendant also argues that the Plea Agreement presented him a  
18 "Hobson's choice" between accepting a plea or potentially losing his  
19 lucrative contract playing professional baseball in South Korea.<sup>5</sup> See  
20 Opp. at 12-13. But difficult choices are virtually always part of the  
21

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22 <sup>4</sup> For example, while Mr. Fernandez might have initially feared  
23 defendant would be promptly extradited upon indictment, defense  
24 counsel was certainly aware that even uncontested extraditions are  
25 lengthy processes, and any threat of a prompt arrest and extradition  
26 would not be credible. See, e.g., Matter of Requested Extradition of  
27 Kirby, 106 F.3d 855, 863 (9th Cir. 1996), as amended (Feb. 27, 1997)  
(discussing the "highly probable lengthy delays" as a result of  
"extradition proceedings themselves and the appeals therefrom," in  
context of bail pending extradition). Furthermore, Mr. Fernandez was  
not present for later calls with the government during the plea  
negotiation process.

28 <sup>5</sup> Notably, defendant never claims that he requested more time to  
consider the Plea Agreement, or that any such request was rejected.

1 plea process, and do not render a plea agreement involuntary. See  
2 Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978) (“[I]mposition of  
3 these difficult choices is an inevitable—and permissible—attribute of  
4 any legitimate system which tolerates and encourages the negotiation  
5 of pleas.” (quoting Chaffin v. Stynchcombe, 412 U.S. 17 (1973))).  
6 This choice was not forced on defendant by the government – his  
7 counsel requested to plea negotiations, and by agreeing to the plea,  
8 defendant was successful in keeping this matter out of the public eye  
9 long enough to finish his professional baseball season in South  
10 Korea.<sup>6</sup> Indeed, it was only after he achieved his objective of  
11 finishing the baseball season that defendant indicated that he might  
12 not be willing to follow through with his agreement to plead guilty.

13 **D. Defendant Has Not Identified Any Purported “Exculpatory**  
14 **Evidence”**

15 Defendant also argues that his plea could not have been  
16 voluntary because he subsequently discovered what he contends to be  
17 exculpatory evidence – which he does not detail.<sup>7</sup> See Opp. at 17.  
18 Defendant cites to out-of-circuit precedent, United States v.

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19  
20 <sup>6</sup> Defendant argues that the government represented that it would  
21 not wait until defendant’s return to the United States to seek an  
22 arrest warrant, but provides no citation or other proof of this  
23 assertion – which the government disputes. Counsel does not offer any  
24 declaration on this point (see generally, ECF No. 128-1), nor does  
25 counsel attach any contemporaneous notes of these discussions which  
26 might support this version of events.

27 <sup>7</sup> Defendant appears to allege that this allegedly exculpatory  
28 evidence “demonstrates that Puig’s waiver had not been knowing and  
intelligent.” Opp. at 2. Defendant, however, fails to advise the  
government of what this alleged exculpatory evidence consists of, and  
as such, the government cannot effectively respond. Defendant does  
not have a right to proceed by ambush, and the Court should not  
consider any such argument unless defendant details what this  
purported evidence consists of and gives the government an  
opportunity to respond.

1 Newbert, 504 F.3d 180 (1st Cir. 2007) in support of this argument,  
2 but Newbert does not support him here. First, as defendant  
3 recognizes, Newbert explicitly did not address a plea that had been  
4 breached, see Opp. at 18 (describing Newbert's holding as "withdrawal  
5 of a plea due to post-plea evidence of innocence does not constitute  
6 a breach"), while here, the Court has already found defendant in  
7 breach. The time for defendant to raise Newbert as a defense to  
8 breach was before the Court found a breach of the Plea Agreement.<sup>8</sup> In  
9 any event, as Judge Fischer found in United States v. McTiernan, in  
10 circumstances similar to those here, Newbert is inapplicable. As  
11 Judge Fischer explained:

12 In United States v. Newbert, 504 F.3d 180, 183 (1st Cir.  
13 2007), for example, the district court found that  
14 defendant's plea was knowing, intelligent, and voluntary,  
15 but that there was nevertheless a "fair and just reason" to  
16 allow him to withdraw it. There, the alleged breach was  
17 based only on Defendant's request to withdraw, and the  
18 language of the plea agreement was narrow and somewhat  
19 circular. The Court found that defendant's withdrawal did  
20 not breach the agreement. Here, the breach is also based on  
21 Defendant's lack of truthfulness - a fact he apparently  
22 does not contest.

19 McTiernan, No. CR 06-259-DSF, 2010 WL 11667960, at \*1 (C.D. Cal. July  
20 7, 2010).<sup>9</sup> In sum, defendant has not explained what his purported

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21 <sup>8</sup> Defendant explicitly states that he found this undefined  
22 exculpatory evidence before he was scheduled to change his plea (see  
23 Opp. at 18), so there is no reason why defendant failed to raise this  
24 argument before the Court found him in breach.

25 <sup>9</sup> As the Newbert court recognized, the right to withdraw a plea  
26 while avoiding a breach is narrow and a defendant's burden is high; a  
27 defendant must show that he "could not, acting with due diligence,  
28 have discovered the evidence before entering into the guilty plea,  
that the evidence establishes a plausible basis for concluding that  
the defendant was not guilty of the crime to which he pleaded guilty,  
and that the evidence would have materially affected his decision as

(footnote cont'd on next page)

1 exculpatory evidence consists of, or why he did not raise it when  
2 opposing the government's motion for a finding of breach, and even if  
3 he had, his cited out-of-circuit authority does not hold that  
4 exculpatory evidence renders a plea agreement involuntary.

5 **E. Defendant's Evidentiary Objections Lack Merit**

6 Finally, defendant asserts numerous evidentiary objections to  
7 the admission of the Factual Basis, and while these some of these  
8 arguments may be addressed at trial, none merit denying the  
9 government's motion at this stage.

10 First, defendant objects that the Factual Basis should be  
11 excluded pursuant to Federal Rule of Evidence 403, because the  
12 Factual Basis would have little probative value. See Opp. at 19-23.  
13 Defendant is incorrect. Courts have routinely found that admission of  
14 a defendant's statements during the plea process enhances a trial's  
15 truth-seeking functions. See McTiernan, 2010 WL 11667960, at \*2  
16 ("Defendant's contention that the statements should be excluded as

17 \_\_\_\_\_  
18 to whether to plead guilty." Newbert, 504 F.3d at 187. The Court  
19 simply cannot make such a finding here, as defendant has not  
20 explained what his purportedly exculpatory evidence consists of, why  
21 his counsel could not have discovered it with ordinary diligence, or  
22 that this undefined evidence provides a plausible basis for believe  
23 him to be innocent.

24 Here, defendant's own recitation of the facts suggests that his  
25 counsel did not even begin investigating these facts until after  
26 defendant returned to the United States, months after he signed the  
27 Plea Agreement. See Opp. at 15 ("[U]pon Puig's return to the United  
28 States, and with direct access to Puig to help him focus on the  
details, to refresh his recollection with his own records, and to  
investigate the government's claims, the defense discovered  
exculpatory evidence."). At most, defendant suggests that he was  
simply too busy continuing his lucrative career "playing baseball  
approximately 6 days per week" (see Opp. at 4), but defendant does  
not explain why this investigation could not occur while defendant  
was working overseas (for example by defense counsel flying to South  
Korea) during the months the matter remained under seal.

1 more prejudicial than probative pursuant to Rule 403 of the Federal  
2 Rules of Evidence has no merit. To the contrary, introduction of  
3 Defendant's admission of guilt will 'enhance the truth-seeking  
4 function of the trial.'" (quoting Mezzanatto, 513 U.S. 204)); United  
5 States v. Mitchell, 633 F.3d 997, 1005 (10th Cir. 2011) ("Even if the  
6 district court determines a guilty plea should be withdrawn, a waiver  
7 of Rule 410 only means a trial will contain more evidence"); United  
8 States v. Sylvester, 583 F.3d 285, 294 (5th Cir. 2009) ("[T]o ignore  
9 relevant evidence of culpability simply because that evidence was  
10 discovered during the course of plea negotiations would arguably  
11 undermine the truth-seeking function of our criminal justice system.  
12 While in theory an innocent defendant might execute such a waiver  
13 (and thus inject false statements into the admissible record), the  
14 benefit of evaluating as much relevant evidence as possible outweighs  
15 the mere possibility of such danger, and will, on balance, enhance  
16 the reliability of a fact-finder's conclusions.").<sup>10</sup>

17 Second, defendant suggests that allowing the government to use  
18 the Factual Basis - even simply for impeachment - would lead to a  
19 "trial-within-a-trial," because defendant "would not be precluded  
20 from offering plea discussion evidence, which is highly probative  
21 value of his mental state during such discussion." Opp. at 21-23. But  
22

---

23 <sup>10</sup> Defendant cites to United States v. Sua, 307 F.3d 1150 (9th  
24 Cir. 2002), but Sua dealt with a co-defendant's statements rather  
25 than those by the defendant himself, and in that case it was the  
26 defendant seeking to admit his codefendant's plea agreement as a  
27 purported admission by the government. Id. at 1153. ("[A] district  
28 court may properly exclude, under Fed. R. Evid. 403, a plea agreement  
offered for the purpose of establishing the government's belief in a  
person's innocence."). Sua says nothing about the weight of a  
defendant's own admission.

1 this is true for virtually any confession or statement made by a  
2 defendant and admitted at trial. Indeed, the Ninth Circuit's Model  
3 Jury Instruction 3.1 addresses this situation, stating that "[w]hen  
4 voluntariness of a confession is an issue, the instruction is  
5 required by 18 U.S.C. § 3501(a), providing that after a trial judge  
6 has determined a confession to be admissible, the judge shall permit  
7 the jury to hear relevant evidence on the issue of voluntariness and  
8 shall instruct the jury to give such weight to the confession as the  
9 jury feels it deserves under all the circumstances." In other words,  
10 a defendant seeking to contextualize an alleged admission of guilt to  
11 law enforcement is hardly unique, and certainly not so confusing as  
12 to warrant preclusion under Rule 403. By defendant's logic, every  
13 confession would need to be excluded because introducing such a  
14 statement would naturally trigger a "trial within a trial" into the  
15 circumstances of the confession. Not so. If defendant wishes to open  
16 the door in front of the jury and explain that the Factual Basis was  
17 part of a since-breached agreement to plead guilty, then that is his  
18 choice to make. In any event, if the Factual Basis is admitted at  
19 trial, or used as impeachment, the Court is certainly capable of  
20 applying 18 U.S.C § 3501(a) and appropriately admitting or limiting  
21 evidence of voluntariness.

22 ///

23 ///

1 **III. CONCLUSION**

2 For the foregoing reasons, and those stated in the Motion, the  
3 government respectfully requests that this Court find that  
4 defendant's breach of the Plea Agreement constitutes a "knowing  
5 breach" under Paragraph 22 of the Plea Agreement and permit the  
6 introduction of the factual basis at trial.

7  
8 Dated: July 12, 2023

Respectfully submitted,

9 E. MARTIN ESTRADA  
10 United States Attorney

11 MACK E. JENKINS  
12 Assistant United States Attorney  
13 Chief, Criminal Division

14 /s/

15 DAN G. BOYLE  
16 JEFF MITCHELL  
17 Assistant United States Attorneys

18 Attorneys for Plaintiff  
19 UNITED STATES OF AMERICA  
20  
21  
22  
23  
24  
25  
26  
27  
28



**DECLARATION OF DAN G. BOYLE**

I, Dan G. Boyle, declare and state as follows:

1. I am an Assistant United States Attorney at the United States Attorney's Office for the Central District of California assigned this matter. I have knowledge of the facts set forth herein and could and would testify to those facts fully and truthfully if called and sworn as a witness.

2. Attached as Exhibits A and B are true and correct redacted versions of memorandums of interview with two of defendant's previous baseball hitting coaches.

3. Attached as Exhibit C is a of a true and correct version of a compilation of pages from the website MyKBOstats.com, for baseball games played by the Kiwoom Heroes between and including June 16, 2022 and June 24, 2022.

4. According to MyKBOstats.com, defendant did not appear in any games for the Kiwoom Heroes between and including June 17, 2022 and July 6, 2023. See MyKBOstats.com, "Yasiel Puig, Kiwoom Heroes #66," available at <https://mykbostats.com/players/2312>.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed at Los Angeles, California, on July 12, 2023.



DAN G. BOYLE

# **EXHIBIT A**

**DEPARTMENT OF HOMELAND SECURITY****HOMELAND SECURITY INVESTIGATIONS****REPORT OF INVESTIGATION**

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07/12/2023 12:29 EDT

Page 1 of 2

**CASE NUMBER**

[REDACTED]

**CASE OPENED**

9/12/2017

**CURRENT CASE TITLE**

Matthew Funke, et. al.

**REPORT TITLE**

[REDACTED]

Interview

**SYNOPSIS**

On September 6, 2017, the United States Attorney's Office, Central District of California, contacted Homeland Security Investigations (HSI) Los Angeles regarding the existence of an illegal online sports gambling website, "Sand s andsports.com." At least some staff of the website, including Matthew FUNKE, work in the Los Angeles, CA area to sign up users to the website and to collect debts and pay out winnings to the site's users. As a result, HSI Los Angeles opened an investigation into FUNKE's potential violations of 18 United States Code, Section 1084 (Transmission of Wagering Information).

The report details the interview of [REDACTED] on 02/15/2023.

**REPORTED BY**

Jason Canty

SPECIAL AGENT

**APPROVED BY**

Matthew Stocks

SPECIAL AGENT

**DATE APPROVED**

2/21/2023

**Current Case Title**

Matthew Funke, et. al.

**ROI Number**

[REDACTED]

**Date Approved**

2/21/2023

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ER 182



# DEPARTMENT OF HOMELAND SECURITY

## HOMELAND SECURITY INVESTIGATIONS

### REPORT OF INVESTIGATION



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07/12/2023 12:29 EDT

Page 2 of 2

#### DETAILS OF INVESTIGATION

On September 6, 2017, the United States Attorney's Office, Central District of California, contacted Homeland Security Investigations (HSI) Los Angeles regarding the existence of an illegal online sports gambling website, "SandSports.com." At least some staff of the website, including Matthew FUNKE, work in the Los Angeles, CA area to sign up users to the website and to collect debts and pay out winnings to the site's users. As a result, HSI Los Angeles opened an investigation into FUNKE's potential violations of 18 United States Code, Section 1084 (Transmission of Wagering Information).

At approximately 09:45 AM, SA's Canty and Seymour attempted a knock and talk at [REDACTED], the residence of [REDACTED] former hitting Coach of the Dodger's Major League Baseball team from 2013-2015 to speak to [REDACTED] regarding his interactions with Yasir PUIG. After SA Canty rang the doorbell, an unidentified female answered the door. SA Canty informed her, that we would like to speak to [REDACTED]. A couple of minutes later, [REDACTED] came to the door. The agents then identified themselves, and informed [REDACTED] that they wanted to speak to him regarding his interactions with Yasir PUIG. [REDACTED] stated that he did not want to speak with the agents at the moment but stated that he would call SA Seymour back.

At approximately 3:00PM on February 15, 2023, [REDACTED] contact SA Seymour telephonically who in turn contacted SA Canty via telephone to conduct the interview. During the questioning, [REDACTED] stated that he was able to communicate with PUIG using a Spanish translator to convey coaching ideas to PUIG. [REDACTED] stated that he had no reason to believe that PUIG was unable to understand [REDACTED] and that PUIG was able to incorporate the instructions that [REDACTED] was conveying through the translator. The interview was terminated at approximately 3:20pm.

This report provides a summary of the interview. For further details refer to the audio recording of the interview that will be maintained in the electronic case file.

This investigation continues.

#### Current Case Title

Matthew Funke, et. al.

#### ROI Number

[REDACTED]

#### Date Approved

2/21/2023

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ER 183

# **EXHIBIT B**



**DEPARTMENT OF THE TREASURY**  
**Internal Revenue Service**  
**Criminal Investigation**

**Memorandum of Conversation**

**Investigation #:** [REDACTED] **Location:** Telephonic  
**Investigation Name:** PUIG, YASIEL [REDACTED]  
**Date:** July 7, 2023  
**Time:** From approximately 8:27 am to 8:34 am  
**Participants:** [REDACTED], Witness  
Jason Canty, Special Agent, HSI  
Chris Seymour, Special Agent, IRS-CI

On the above date and time Special Agents with IRS Criminal Investigation Chris Seymour (SA Seymour), and Homeland Security Investigations Special Agent Jason Canty (SA Canty) spoke with [REDACTED], the hitting coach for the Cleveland Guardians.

Rodriguez provided consent to record the phone call and a copy of the recording is attached to this memorandum ([REDACTED]).

SA Seymour reviewed Title 18 United States Code Section 1001 regarding False Statements with [REDACTED] and he stated that he understood. The following information was discussed:

1. [REDACTED] believed he met YASIEL PUIG in 2018 or 2019. Although he showed up late, PUIG was a hitter and came in every day to prepare for the games. [REDACTED] spoke in Spanish with PUIG and had no problems with talking with PUIG.
2. [REDACTED] described his job as being available to help PUIG. [REDACTED] did not notice PUIG having any learning impediments or problems with understanding. [REDACTED] described PUIG as quiet and respectful. Most of the players were Spanish speakers that year and [REDACTED] did not notice any problems with PUIG understanding them.
3. During the month and a half or two months PUIG was there [REDACTED] spent at least 10 minutes every day with PUIG. In addition, during the games, [REDACTED] provided a game report discussing what [REDACTED] knew about the pitcher and about information such as how the pitcher threw the ball and how fast the pitcher threw the ball. PUIG was quick to understand.
4. [REDACTED] was not aware of any disciplinary action. PUIG may not have run to first base one time and the manager handled it, and it never happened again.

5. [REDACTED] – now with the Boston Red Sox was an outfield coach that may have interacted with PUIG when he was there.
6. [REDACTED] confirmed that his answers were honest and truthful to the best of his ability.

SA Seymour and SA Canty thanked [REDACTED] for his time and the interview was concluded at approximately 8:34 AM.

I prepared this memorandum on July 11, 2023, after refreshing my memory from notes made during and immediately after the interview with [REDACTED].



Chris Seymour  
Special Agent

Attachments:

Audio File [REDACTED]



# **EXHIBIT C**



June 16, 2022 2:30am



## Watch Highlights

W: Kim Jae-wong  
L: Park Chi-guk

Doosan										
	Pos	BA	AB	R	H	HR	RBI	BB	SO	HBP
1 An Gweon-su #8	RF	.275	3	1	0	0	0	1	0	0
2 Fernández #9	1B	.000	2	0	0	0	0	1	0	1
↳ Jo Soo-haeng #51	PR	.157	0	0	0	0	0	0	0	0
↳ Kwon Min-seok #7	1B	.000	0	0	0	0	0	0	0	0
3 Kim In-tae #39	LF	.273	3	1	1	0	0	1	0	0
4 Kim Jae-hwan #32	DH	.244	4	0	2	0	2	0	1	0
5 Kang Seung-ho #23	2B	.257	4	0	0	0	0	0	3	0
6 Park Sei-hyok #10	C	.215	4	0	1	0	0	0	1	0
7 Jung Soo-bin #31	CF	.274	3	0	0	0	0	1	0	0
8 Kim Jae-ho #52	3B	.291	3	0	0	0	0	0	0	0
9 An Jae-seok #3	SS	.173	2	0	0	0	0	0	2	0
↳ Park Gye-beom #14	PH	.234	1	0	0	0	0	0	0	0
↳ Seo Ye-il #16	3B	.222	0	0	0	0	0	0	0	0
Kiwoom										
	Pos	BA	AB	R	H	HR	RBI	BB	SO	HBP
1 Kim Woong-bin #1	DH	.200	3	0	0	0	1	2	2	0
2 Song Sung-mun #24	3B	.256	5	1	3	1	3	0	0	0
3 Lee Jung-hoo #51	CF	.311	5	0	1	0	1	0	1	0
4 Puig #66	RF		0	0	0	0	0	0	0	0

↳	Doosan	#14	LF	.223	U	I	U	U	I	U	U
5	Kim Hye-seong	#3	2B	.329	2	1	1	0	0	2	0
6	Kim Su-hwan	#31	1B	.152	3	0	0	0	0	2	0
↳	Jeon Byeong-woo	#13	PH	.125	0	0	0	0	0	0	0
7	Park Ju-hong	#57	LF	.159	3	1	1	0	0	1	0
8	Lee Ji-young	#56	C	.258	4	0	0	0	0	1	0
9	Kim Whee-jip	#33	SS	.253	2	2	1	0	0	2	1
↳	Sin Jun-woo	#5	SS	.111	0	0	0	0	0	0	0

Pitching

Doosan	ERA	IP	NP	R	ER	H	HR	SO	BB	HB	GS
Gwak Been #47	1.80	5	95	1	1	4	0	4	4	0	55
Jeong Cheol-won #65	0.00	1 1/3	22	0	0	0	0	2	0	0	0
Lee Hyun-seung #48	13.50	0 2/3	12	1	1	1	1	2	0	0	0
Park Chi-guk #1	54.00	0 2/3	25	4	4	1	0	1	3	0	0
Jang Won-jun #28	0.00	0 1/3	10	0	0	1	0	0	1	0	0
Kiwoom	ERA	IP	NP	R	ER	H	HR	SO	BB	HB	GS
Choi Won-tae #20	3.60	5	91	2	2	2	0	5	2	1	57
Kim Tae-hoon #17	0.00	1	9	0	0	1	0	0	0	0	0

Doosan Bears vs Kiwoom Heroes - July 12, 2023 at 1:00 PM KST at Gwangju Stadium

Moon Sung-hyun #21 0.00 1 16 0 0 0 0 1 0 0

Plays

1st Inning
2nd Inning
3rd Inning
4th Inning
5th Inning
6th Inning
7th Inning
8th Inning
9th Inning

Deciding Hit	none
HR	Song Sung-mun (#6, 7th inning off Lee Hyun-

2B	Kim Jae-hwan (1st inning), Park Sei-hyok (2nd inning)
SB	Kim Hye-seong (2nd inning)
OOB	Kim In-tae (6th inning)
GIDP	Kim Jae-hwan (8th inning)
WP	Park Chi-guk (8th inning)
Umpires	Koo Myung-hwan, Moon Dong-gyoon, Lee Ki-joong, Won Hyun-shik
Venue	Gocheok Sky Dome
Attendance	2349
Duration	3:38

This site is created for fans, by fans, and is not affiliated with the KBO League (KBO 리그) or the Korea Baseball Organization (한국야구위원회). All information presented here should be considered *unofficial*. Player photos and official team logos are the property of their respective teams.

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MyKBO Stats v2 — Build 513 (2023-06-29)

Powered by [Elixir](#) and the [Phoenix Framework](#).

# LG Twins 4 : 2 Kiwoom Heroes

June 17, 2022 2:30am

June 17, 2022 Game List									
Hanwha Eagles		1 : 1		NC Dinos					
		Final/12							
KT Wiz		4 : 2		Doosan Bears					
W: Ko Young-pyo		Final		L: Choi Seung-yong					
SV: Kim Jae-yoon									
LG Twins		4 : 2		Kiwoom Heroes					
W: Kim Jin-sung		Final/10		L: Ha Yeong-min					
SV: Go Woo-suk									
SSG Landers		6 : 2		Lotte Giants					
W: Font		Final		L: Park Se-woong					
Samsung Lions		3 : 5		Kia Tigers					
L: Won Tae-in		Final		W: Yang Hyeon-jong					
				SV: Jung Hai-young					

	1	2	3	4	5	6	7	8	9	10	R	H	E	B
LG Twins	0	0	0	0	1	0	0	0	0	3	4	12	0	3
Kiwoom Heroes	0	0	1	0	0	0	0	0	0	1	2	9	3	5

W: Kim Jin-sung SV: Go Woo-suk L: Ha Yeong-min

Video Links

Watch Highlights

LG	Pos	BA	AB	R	H	HR	RBI	BB	SO	HBP
1 Hong Chang-ki #51	RF	.330	5	0	1	0	0	0	1	0
2 Park Hae-min #17	CF	.288	4	2	1	0	0	1	0	0
3 Kim Hyeon-su #22	LF	.296	5	1	3	1	4	0	1	0
4 Chae Eun-seong #55	1B	.290	4	0	1	0	0	0	1	1
↳ Kim Min-sung #16	3B	.288	0	0	0	0	0	0	0	0
5 Oh Ji-hwan #10	SS	.259	5	0	1	0	0	0	1	0
6 Moon Sung-ju #8	DH	.314	4	0	2	0	0	0	0	0
↳ Lee Chun-woong #32	PH	.750	1	0	0	0	0	0	0	0
7 Moon Bo-gyeong #35	3B	.284	3	0	0	0	0	1	0	0
8 Son Ho-young #50	2B	.308	2	0	0	0	0	0	0	0
↳ Lee Sang-ho #2	PH	.167	2	0	1	0	0	0	0	0
9 Hur Do-hwan #30	C	.167	3	0	1	0	0	0	1	0
↳ Song Chan-eui #66	PR	.059	0	0	0	0	0	0	0	0
↳ Yoo Kang-nam #27	C	.237	1	1	1	0	0	0	0	0
Kiwoom										
1 Kim Jun-wan #14	RF	.218	3	1	0	0	0	2	0	0
2 Song Sung-mun #24	3B	.250	5	0	2	0	1	0	0	0
3 Lee Jung-hoo #51	CF	.317	5	0	3	0	0	0	0	0

↳ Jeon Dyeung-wuu #15	ID	.120	I	U	U	U	U	I	U
5 Kim Woong-bin #1	DH	.192	5	0	0	1	0	1	0
6 Park Ju-hong #57	LF	.159	3	0	1	0	0	1	0
↳ Park Jun-tae #23	PR	.200	1	0	1	0	0	0	1
7 Lee Ji-young #56	C	.263	4	0	1	0	0	1	0
↳ Kim Jae-hyun #32	C	.333	1	0	0	0	0	1	0
8 Kim Ju-hyung #6	2B	.152	1	0	0	0	0	0	0
↳ Kim Hye-seong #3	PH	.327	1	0	0	0	2	0	0
9 Kim Whee-jip #33	SS	.251	4	1	1	0	0	2	0

Pitching

LG	ERA	IP	NP	R	ER	H	HR	SO	BB	HB	GS
Kim Yun-sik #57	1.42	6 1/3	90	1	1	5	0	3	1	0	62
Yi Jung-yong #31	0.00	0 2/3	10	0	0	0	0	0	1	0	
Jin Hae-soo #21	0.00	1	13	0	0	1	0	0	0	0	
Kim Dae-yu #69	0.00	0 1/3	10	0	0	1	0	1	0	0	
Kim Jin-sung #42	0.00	0 2/3	10	0	0	0	0	2	1	0	
Go Woo-suk #19	9.00	1	31	1	1	2	0	2	1	1	
Kiwoom	ERA	IP	NP	R	ER	H	HR	SO	BB	HB	GS



Lee Seung-ho #47	0.00	1	9	0	0	2	0	0	0	0
Kim Tae-hoon #17	0.00	1	9	0	0	2	0	0	0	0
Kim Jae-woong #28	0.00	1	13	0	0	0	0	1	0	1
Moon Sung-hyun #21	0.00	1	11	0	0	1	0	0	0	0
Ha Yeong-min #50	40.50	0 2/3	25	3	3	4	1	0	0	0
Lee Myeong-jong #97	0.00	0 1/3	1	0	0	0	0	0	0	0

Plays

1st Inning
2nd Inning
3rd Inning
4th Inning
5th Inning
6th Inning
7th Inning
8th Inning
9th Inning

<b>Deciding Hit</b>	Kim Hyun-soo (10th inning, 1 out, runners on 1,3, RF wall HR)
<b>HR</b>	Kim Hyun-soo (#13, 10th inning off Ha Yeong-min, 3 run)
<b>2B</b>	Park Ju-hong (7th inning), Park Jun-tae (9th inning)
<b>E</b>	Lee Ji-young (3rd, 5th inning), Song Sung-mun (9th inning)
<b>SB</b>	Park Hae-min (3rd, 5th inning)
<b>CS</b>	Chae Eun-seong (8th inning), Lee Sang-ho (9th inning)
<b>OOB</b>	Moon Sung-ju (9th inning)
<b>GIDP</b>	Kim Ju-hyung (3rd inning), Hong Chang-ki (7th inning)
<b>PB</b>	Lee Ji-young (9th inning)
<b>Umpires</b>	Yoon Sang-won, Kim Ik-su, Lee Min-ho, Chun Il-soo
<b>Venue</b>	Gocheok Sky Dome

LG Twins0 : 2Kiwoom Heroes

June 17, 2022 10:00pm

June 18, 2022 Game List									
LG Twins		0 : 2		Kiwoom Heroes					
L: Im Chan-kyu		Final		W: Han Hyun-hee					
				SV: Lee Seung-ho					
Hanwha Eagles		2 : 3		NC Dinos					
L: Kim Jong-soo		Final		W: Kim Si-hoon					
KT Wiz		0 : 5		Doosan Bears					
L: Despaigne		Final		W: Stock					
SSG Landers		10 : 5		Lotte Giants					
W: Kim Kwang-hyun		Final		L: Lee In-bok					
Samsung Lions		6 : 2		Kia Tigers					
W: Buchanan		Final		L: Han Seung-hyuk					

	1	2	3	4	5	6	7	8	9	R	H	E	B
LG Twins	0	0	0	0	0	0	0	0	0	0	6	0	3
Kiwoom Heroes	1	1	0	0	0	0	0	0	X	2	9	1	1

W: Han Hyun-heeSV: Lee Seung-hoL: Im Chan-kyu

Video Links

Watch Highlights

LG	Pos	BA	AB	R	H	HR	RBI	BB	SO	HBP
1 Hong Chang-ki #51	RF	.328	4	0	0	0	0	0	0	0
2 Park Hae-min #17	CF	.286	3	0	0	0	0	1	1	0
3 Kim Hyeon-su #22	LF	.290	4	0	1	0	0	0	0	0
4 Chae Eun-seong #55	1B	.290	4	0	1	0	0	0	1	0
5 Oh Ji-hwan #10	SS	.261	3	0	1	0	0	1	1	0
6 Moon Sung-ju #8	DH	.312	3	0	1	0	0	1	0	0
7 Moon Bo-gyeong #35	3B	.290	4	0	2	0	0	0	1	0
8 Yoo Kang-nam #27	C	.230	4	0	0	0	0	0	2	0
9 Son Ho-young #50	2B	.308	2	0	0	0	0	0	1	0
↳ Song Chan-eui #66	PH	.056	1	0	0	0	0	0	0	0
Kiwoom										
Kiwoom	Pos	BA	AB	R	H	HR	RBI	BB	SO	HBP
1 Kim Jun-wan #14	RF	.226	3	1	1	0	0	0	0	0
2 Song Sung-mun #24	3B	.239	4	0	0	0	0	0	0	0
3 Lee Jung-hoo #51	CF	.319	3	0	3	0	1	1	0	0
4 Kim Hye-seong #3	2B	.330	4	0	2	0	0	0	2	0
5 Park Ju-hong #57	LF	.136	3	0	0	0	0	0	2	0
↳ Park Jun-tae #23	RF	.133	1	0	0	0	0	0	1	0
6 Kim Jae-hyun #32	C	.250	2	0	0	0	0	0	0	0

	PH	.159	1	0	0	0	0	0	1	0
Kim Su-hwan #31										
Jeon Byeong-woo #13 B	.148	3	0	1	0	0	0	0	0	0
Kim Whee-jip #33	.253	2	0	1	0	0	0	0	0	0

# Pitching

LG	ERA	IP	NP	R	ER	H	HR	SO	BB	HB	GS
Im Chan-kyu #1	3.60	5	80	2	2	8	1	4	0	0	47
Choi Dong-hwan #13	0.00	1	8	0	0	0	0	0	0	0	0
Choi Sung-hoon #56	0.00	1	16	0	0	1	0	1	1	1	0
Kim Dae-yu #69	0.00	1	11	0	0	0	0	2	0	0	0
Kiwoom	ERA	IP	NP	R	ER	H	HR	SO	BB	HB	GS
Han Hyun-hee #63	0.00	6	98	0	0	5	0	3	1	0	64
Lee Young-jun #64	0.00	1	13	0	0	1	0	1	0	0	0
Lee Myeong-jong #97	0.00	1	16	0	0	0	0	0	1	0	0
Lee Seung-ho #47	0.00	1	23	0	0	0	0	3	1	0	0

1st Inning
2nd Inning
3rd Inning
4th Inning
5th Inning
6th Inning
7th Inning
8th Inning
9th Inning

Deciding Hit	Lee Jung-hoo (1st inning, 1 out, runner on 3rd, CF-RF gap single)
HR	Kim Woong-bin (#1, 2nd inning off Im Chan-kyu, 1 run)
3B	Kim Jun-wan (1st inning)
2B	Kim Hyun-soo (1st inning), Moon Sung-ju (4th inning)

<b>SB</b>	Oh Ji-hwan (2nd inning)
<b>OOB</b>	Oh Ji-hwan (4th inning)
<b>GIDP</b>	Yoo Kang-nam (5th inning)
<b>WP</b>	Lee Myeong-jong (8th inning)
<b>Umpires</b>	Lee Min-ho, Chun Il-soo, Kim Ik-su, Song Soo-geun
<b>Venue</b>	Gocheok Sky Dome
<b>Attendance</b>	8705
<b>Duration</b>	2:53

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LG Twins

4 : 2

Kiwoom Heroes

June 18, 2022 10:00pm

June 19, 2022 Game List			
LG Twins W: Jin Hae-soo SV: Go Woo-suk	4 : 2 Final/10	Kiwoom Heroes L: Kim Tae-hoon	
Hanwha Eagles L: Kim Jae-young	3 : 6 Final	NC Dinos W: Ryou Jin-oung SV: Lee Yong-chan	
KT Wiz W: So Hyeong-jun	7 : 1 Final	Doosan Bears L: Choi Won-joon	
SSG Landers L: Kim Taek-hyeong	4 : 7 Final	Lotte Giants W: Kim Do-gyu SV: Choi Jun-vonn	
W. Suddiez	Final	L. Williams	

⋮ ← Games



1	2	3	4	5	6	7	8	9	10	R	H	E	B
LG Twins	0	0	0	0	0	1	0	0	3	4	7	0	2
Kiwoom Heroes	0	0	0	1	0	0	0	0	1	2	6	0	0

W: Jin Hae-soo SV: Go Woo-suk L: Kim Tae-hoon

Video Links

Watch Highlights



LG	Pos	BA	AB	R	H	HR	RBI	BB	SO	HBP
1 Hong Chang-ki #51	RF	.327	5	0	0	0	0	0	1	0
2 Park Hae-min #17	CF	.288	4	0	1	0	1	1	0	0
3 Kim Hyeon-su #22	DH	.289	5	0	1	0	1	0	0	0
4 Chae Eun-seong #55	1B	.294	4	1	2	1	2	0	1	0
↳ Hur Do-hwan #30	C	.133	0	0	0	0	0	0	0	0
5 Oh Ji-hwan #10	SS	.255	5	0	0	0	0	0	1	0
6 Moon Sung-ju #8	LF	.310	4	0	1	0	0	0	1	0
7 Song Chan-eui #66	2B	.050	3	0	0	0	0	0	2	0
↳ Lee Sang-ho #2	PH	.170	1	1	1	0	0	0	0	0
8 Yoo Kang-nam #27	C	.236	2	0	1	0	0	1	0	0
↳ Son Ho-young #50	PR	.364	0	1	0	0	0	0	0	0
↳ Moon Bo-gyeong #35	1B	.287	0	0	0	0	0	0	0	0
9 Kim Min-sung #16	3B	.283	3	1	0	0	0	0	2	0
Kiwoom	Pos	BA	AB	R	H	HR	RBI	BB	SO	HBP
1 Kim Jun-wan #14	LF	.224	4	0	1	0	0	0	2	0
2 Park Jun-tae #23	RF	.111	4	0	0	0	0	0	2	0
3 Lee Jung-hoo #51	CF	.312	4	1	1	1	1	0	1	0
4 Kim Hye-seong #3	2B	.324	4	0	0	0	0	0	1	0

7 Kim Woong-bin #1	DH	.216	4	0	1	0	0	0	2	0
8 Jeon Byeong-woo #13	1B	.179	4	1	2	1	1	0	0	0
9 Lee Ji-young #56	C	.259	3	0	0	0	0	0	0	0
↳ Park Ju-hong #57	PH	.143	1	0	0	0	0	0	1	0

## Pitching

LG	ERA	IP	NP	R	ER	H	HR	SO	BB	HB	GS
Plutko #45	1.29	7	89	1	1	4	1	9	0	0	74
Yi Jung-yong #31	0.00	1	24	0	0	1	0	1	0	0	0
Jin Hae-soo #21	0.00	1	11	0	0	0	0	0	0	0	0
Go Woo-suk #19	9.00	1	18	1	1	1	1	3	0	0	0
Kiwoom	ERA	IP	NP	R	ER	H	HR	SO	BB	HB	GS
Jokisch #43	1.29	7	95	1	1	4	1	7	0	0	72
Kim Jae-woong #28	0.00	1	15	0	0	0	0	0	1	0	0
Moon Sung-hyun #21	0.00	1	14	0	0	1	0	0	0	0	0
Kim Tae-hoon #17	40.50	0 2/3	26	3	3	2	0	1	1	0	0
Yang Hyun #39	0.00	0 1/3	3	0	0	0	0	0	0	0	0

1st Inning
2nd Inning
3rd Inning
4th Inning
5th Inning
6th Inning
7th Inning
8th Inning
9th Inning
10th Inning

Deciding Hit	Park Hae-min (10th inning, 1 out, bases loaded walk)
HR	Lee Jung-hoo (#11, 4th inning off Plutko, 1 run), Chae Eun-seong (#4, 7th inning off Jokisch, 1 run), Jeon Byeong-woo (#5, 10th inning off Go Woo-suk, 1 run)

WP	Yi Jung-yong (8th inning)
Umpires	Kim Ik-su, Song Soo-geun, Chun Il-soo, Yoon Sang-won
Venue	Gocheok Sky Dome
Attendance	7849
Duration	3:09

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# Kiwoom Heroes 4 : 3 Samsung Lions

June 21, 2022 2:30am

June 21, 2022 Game List									
Hanwha Eagles		4 : 10		LG Twins					
L: Ramirez		Final		W: Lee Min-ho					
Lotte Giants		5 : 6		Kia Tigers					
L: Barnes		Final		W: Im Gi-yeong					
NC Dinos		1 : 8		KT Wiz					
L: Lee Jae-hak		Final		W: Um Sang-back					
Doosan Bears		16 : 2		SSG Landers					
W: Lee Young-ha		Final		L: Lee Geun-wook					
Kiwoom Heroes		-		-					

	1	2	3	4	5	6	7	8	9	R	H	E	B
Kiwoom Heroes	0	0	0	2	0	1	1	0	0	4	11	0	6
Samsung Lions	3	0	0	0	0	0	0	0	0	3	13	0	2

W: Lee Myeong-jong SV: Moon Sung-hyun L: Lee Seung-hyun

Video Links

Watch Highlights

Kiwoom										
	Pos	BA	AB	R	H	HR	RBI	BB	SO	HBP
1 Kim Jun-wan #14	LF	.215	5	0	0	0	1	0	0	0
2 Song Sung-mun #24	3B	.244	5	0	1	0	1	0	1	0
3 Lee Jung-hoo #51	CF	.316	3	0	2	0	0	2	0	0
4 Kim Hye-seong #3	2B	.330	4	0	2	0	0	1	0	0
5 Kim Woong-bin #1	DH	.192	5	0	0	0	0	0	3	0
6 Kim Su-hwan #31	1B	.170	4	1	1	0	0	0	2	0
7 Lee Ji-young #56	C	.268	4	1	2	0	1	1	0	0
8 Park Jun-tae #23	RF	.176	3	1	1	0	0	2	2	0
9 Kim Whee-jip #33	SS	.256	4	1	2	0	1	0	0	0
Samsung										
	Pos	BA	AB	R	H	HR	RBI	BB	SO	HBP
1 Kim Hyeon-joon #41	CF	.314	5	1	2	0	0	0	0	0
2 Oh Sun-jin #3	3B	.244	4	1	2	0	0	1	0	0
3 Kim Hun-gon #34	PR		0	0	0	0	0	0	0	0
3 Pirela #63	LF	.278	5	0	1	0	1	0	1	0
4 Oh Jae-il #44	1B	.185	3	1	1	0	0	1	0	0
5 Kang Min-ho #47	DH	.306	4	0	1	0	0	0	1	0
6 Kim Jae-seong #48	C	.259	4	0	3	0	1	0	0	0
7 Choi Young-jin #32	PR		0	0	0	0	0	0	0	0

↳ Park Seung-kyu #65	RF	.000	1	0	0	0	0	0	0	0	0	0	0	0
8 Lee Hae-seung #67	SS	.375	4	0	2	0	0	0	0	0	0	0	0	0
9 An Ju-hyeong #14	2B	.244	3	0	0	0	0	0	0	0	0	0	0	0
↳ Kim Tae-gun #42	PH	.262	1	0	0	0	0	0	0	0	0	0	0	0

## Pitching

Kiwoom	ERA	IP	NP	R	ER	H	HR	SO	BB	HB	GS
Eppler #8	9.00	3	65	3	3	9	0	2	0	0	31
Yang Hyun #39	0.00	2	30	0	0	1	0	1	0	0	0
Lee Myeong-jong #97	0.00	2	28	0	0	1	0	1	1	0	0
Kim Jae-woong #28	0.00	1	20	0	0	2	0	0	0	0	0
Moon Sung-hyun #21	0.00	1	17	0	0	0	0	0	0	1	0

Player	W	L	SV	IP	ERA	WHIP	WAR	WAR-A	WAR-E	WAR-F	WAR-T	WAR-TOT
Woo Kyu-min #2	0.00	0	10	1	1	2	0	1	0			
Jang Pill-joon #26	0.00	1	14	0	0	0	0	0	1	0		
Lee Seung-hyun #20	9.00	1	18	1	1	2	0	2	0	0		
Lee Seung-hyun #54	0.00	1	19	0	0	2	0	2	0	0		
Choi Chung-yeon #51	0.00	1	15	0	0	0	0	1	0	0		

## Plays

1st Inning
2nd Inning
3rd Inning
4th Inning
5th Inning
6th Inning
7th Inning
8th Inning
9th Inning



2B	Kim Whee-jip (4th inning), Lee Ji-young (6th inning), Kim Su-hwan (7th inning)
CS	Kim Hyun-jun (2nd inning)
OOB	Park Jun-tae (6th inning), Kim Hun-gon (9th inning)
GIDP	Kim Tae-gun (8th inning)
WP	Kim Jae-woong (8th inning)
Umpires	Park Joong-chul, Kwon Young-chul, Lee Gye-sung, Na Gwang-nam
Venue	Daegu Samsung Lions Park
Attendance	5936
Duration	3:27

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# Kiwoom Heroes 6 : 0 Samsung Lions

June 22, 2022 2:30am

June 22, 2022 Game List									
Hanwha Eagles		5 : 6		LG Twins					
L: Yun Dae-kyung		Final		W: Kelly		SV: Go Woo-suk			
Lotte Giants		7 : 5		Kia Tigers					
W: Choi Jun-yong		Final/10		L: Jung Hai-young					
NC Dinos		11 : 0		KT Wiz					
W: Koo Chang-mo		Final		L: Bae Je-seong					
Doosan Bears		5 : 6		SSG Landers					
L: Hong Geon-hui		Final/10		W: Seo Dong-min					
Kiwoom Heroes		6 : 0		Samsung Lions					

1	2	3	4	5	6	7	8	9	R	H	E	B
Kiwoom Heroes	2	0	0	0	0	3	1	0	6	13	1	5
Samsung Lions	0	0	0	0	0	0	0	0	0	7	0	3

W: Choi Won-tae L: Baek Jung-hyun

Video Links

Watch Highlights

Kiwoom										
	Pos	BA	AB	R	H	HR	RBI	BB	SO	HBP
1 Kim Jun-wan #14	RF	.233	3	1	2	0	1	2	0	0
2 Song Sung-mun #24	3B	.244	5	1	1	0	0	0	1	0
3 Lee Jung-hoo #51	CF	.317	5	1	3	1	3	0	0	0
4 Kim Hye-seong #3	2B	.328	3	0	1	0	0	1	1	0
↳ Park Jun-tae #23	RF	.133	1	0	0	0	0	0	0	0
5 Lee Yong-kyu #19	LF	.261	4	0	2	0	0	0	0	0
↳ Sin Jun-woo #5	2B	.105	1	0	0	0	0	0	0	0
6 Kim Su-hwan #31	1B	.152	3	0	0	0	0	0	0	0
↳ Jeon Byeong-woo #13	1B	.125	0	1	0	0	0	0	0	1
7 Lee Ji-young #56	C	.263	4	1	1	0	0	0	0	0
↳ Kim Jae-hyun #32	C	.500	0	0	0	0	0	0	0	0
8 Kim Woong-bin #1	DH	.220	3	0	1	0	0	0	0	0
9 Kim Whee-jip #33	SS	.257	3	1	2	1	2	1	0	0
Samsung										
	Pos	BA	AB	R	H	HR	RBI	BB	SO	HBP
1 Kim Hyeon-joon #41	CF	.310	4	0	1	0	0	0	0	0
↳ Park Seung-kyu #65	CF	.000	1	0	0	0	0	0	1	0
2 Oh Sun-jin #3	3B	.233	4	0	1	0	0	0	1	0
↳ Kim Ho-jae #8	3B	.185	0	0	0	0	0	0	0	0

↳ Jung Jui-suk #32	LF	.430	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4 Oh Jae-il #44	1B	.179	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
↳ Choi Young-jin #32	1B		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5 Kim Jae-seong #48	DH	.214	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6 Kim Tae-gun #42	C	.277	4	0	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0
7 An Ju-hyeong #14	2B	.262	4	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0
8 Lee Hae-seung #67	SS	.250	4	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0
9 Kim Hun-gon #34	RF	.000	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Pitching

Kiwoom	ERA	IP	NP	R	ER	H	HR	SO	BB	HB	GS
Choi Won-tae #20	0.00	5	86	0	0	3	0	5	2	1	63
Kim Tae-hoon #17	0.00	1	15	0	0	2	0	2	0	0	0
Lee Seung-ho #47	0.00	1	13	0	0	1	0	0	0	0	0
Kim Seon-gi #49	0.00	2	17	0	0	1	0	2	0	0	0
Samsung	ERA	IP	NP	R	ER	H	HR	SO	BB	HB	GS
Baek Jung-hyun #29	5.68	6 1/3	96	4	4	11	2	0	1	0	35
Lee Sang-min #59	13.50	0 2/3	19	1	1	1	0	2	1	0	0
Park Jung-jun #66	9.00	1	27	1	1	1	0	0	0	2	1

## Plays

1st Inning
2nd Inning
3rd Inning
4th Inning
5th Inning
6th Inning
7th Inning
8th Inning
9th Inning

Deciding Hit	Lee Jung-hoo (1st inning, 1 out, runner on 2nd, RF wall HR)
HR	Lee Jung-hoo (#12, 1st inning off Baek Jung-hyun, 2 run), Kim Whee-jip (#1, 7th inning off Baek Jung-hyun, 2 run)

	bin (8th inning)
E	Kim Whee-jip (3rd inning)
SB	Kim Hyun-jun (5th inning)
CS	Kim Hye-seong (1st inning)
OOB	Kim Jun-wan (1st inning), Lee Jung-hoo (3rd inning), Lee Yong-kyu (6th inning), Kim Tae-gun (8th inning)
Umpires	Lee Gye-sung, Na Gwang-nam, Kwon Young-chul, Jung Jong-su
Venue	Daegu Samsung Lions Park
Attendance	6500
Duration	3:06

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MyKBO Stats v2 — Build 513 (2023-06-29)

June 23, 2022 2:30am

Hanwha Eagles	Canceled Rained Out	LG Twins
Lotte Giants L: Na Gyun-an	4 : 7 Final	Kia Tigers W: Kim Jae-yeol SV: Jeon Sang-hyun
NC Dinos	Canceled Rained Out	KT Wiz
Doosan Bears	Canceled Rained Out	SSG Landers
Kiwoom Heroes W: An Woo-jin	6 : 1 Final	Samsung Lions L: Won Tae-in

	Kiwom	Pos	BA	AB	R	H	HR	RBI	BB	SO	HBP
1	Kim Jun-wan #14	RF	.224	4	1	1	0	1	1	0	0
2	Kim Whee-jip #33	SS	.252	3	0	1	0	0	1	1	1
3	Lee Jung-hoo #51	CF	.314	5	0	2	0	2	0	0	0
4	Kim Hye-seong #3	2B	.326	5	1	1	0	0	0	0	0
5	Song Sung-mun #24	DH	.245	4	1	1	0	0	0	1	0
6	Kim Su-hwan #31	1B	.156	2	0	0	0	0	0	2	0
↳	Jeon Byeong-woo #13	1B	.120	1	0	0	0	0	0	0	0
7	Lee Ji-young #56	C	.265	3	1	1	0	0	1	0	0
8	Lee Byung-gyu #9	LF	.250	3	1	1	0	3	0	1	0
↳	Sin Jun-woo #5	SS	.105	1	0	0	0	0	0	0	0
9	Lee Jae-hong #4	3B	.500	2	0	1	0	0	0	1	0
↳	Lee Yong-kyu #19	PH	.250	0	0	0	0	0	1	0	0
↳	Park Jun-tae #23	RF	.143	0	1	0	0	0	0	0	1

	Samsung	Pos	BA	AB	R	H	HR	RBI	BB	SO	HBP
1	Kim Hyeon-joon #41	CF	.316	4	0	2	0	1	0	0	0
2	Oh Sun-jin #3	3B	.227	2	0	0	0	0	1	1	0
↳	Kim Jae-seong #48	PH	.236	1	0	1	0	0	0	0	0
↳	An Ju-hyeong #14	PR	.263	0	0	0	0	0	0	0	0



4	이재민 #44	ID	.100	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5	이재민 #44	ID	.100	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6	이재민 #44	ID	.100	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7	이재민 #44	ID	.100	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8	이재민 #44	ID	.100	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9	이재민 #44	ID	.100	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Pitching

Kiwoom		ERA	IP	NP	R	ER	H	HR	SO	BB	HB	GS
An Woo-jin #41		1.23	7 1/3	100	1	1	5	0	4	1	0	68
Kim Jae-woong #28		0.00	0 2/3	9	0	0	1	0	0	0	0	0
Kim Tae-hoon #17		0.00	1	10	0	0	0	0	0	1	0	0
Samsung		ERA	IP	NP	R	ER	H	HR	SO	BB	HB	GS
Won Tae-in #18		7.50	6	95	5	5	8	0	5	3	1	37
Lee Seung-hyun #54		0.00	1	10	0	0	0	0	1	0	0	0
Park Jung-jun #66		0.00	1	6	0	0	0	0	0	0	0	0
Choi Chung-yeon #51		9.00	1	19	1	1	1	0	0	1	1	1

1st Inning
2nd Inning
3rd Inning
4th Inning
5th Inning
6th Inning
7th Inning
8th Inning
9th Inning

Deciding Hit	Lee Jung-hoo (1st inning, no out, runners on 1,2, RF single)
3B	Lee Byung-kyu (6th inning)
E	Kim Su-hwan (3rd inning), Oh Sun-jin (4th inning)
OOB	Kim Whee-jip (1st inning)

<b>GIDP</b>	Song Jun-suk (2nd inning), Lee Jung-hoo (3rd inning), Pirela (8th inning), Kim Tae-gun (9th inning), Kim Whee-jip (9th inning)
<b>Umpires</b>	Kwon Young-chul, Jung Jong-su, Na Gwang-nam, Park Joong-chul
<b>Venue</b>	Daegu Samsung Lions Park
<b>Attendance</b>	4959
<b>Duration</b>	2:36

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Kiwoom Heroes

1 : 5

Lotte Giants

June 24, 2022 2:30am

June 24, 2022 Game List		
Kia Tigers W: Kim Jeong-bin SV: Jang Hyun-sik	4 : 3 Final	Doosan Bears L: Jeong Cheol-won
LG Twins L: Jung Woo-young	6 : 9 Final	KT Wiz W: Ju Kwon SV: Kim Jae-yoon
NC Dinos L: Rucinski	2 : 14 Final	SSG Landers W: Font
Samsung Lions L: Buchanan	0 : 3 Final	Hanwha Eagles W: Jang Min-je SV: Jang Si-hwan
L: Han Hyun-hee	Final	SV: Kim Won-jung

	1	2	3	4	5	6	7	8	9	R	H	E	B
Kiwoom Heroes	0	0	0	0	0	1	0	0	0	1	8	0	4
Lotte Giants	2	3	0	0	0	0	0	0	X	5	11	1	5

W: Lee In-bok    SV: Kim Won-jung    L: Han Hyun-hee

Video Links

Watch Highlights

Kiwoom										
		Pos	BA	AB	R	H	HR	RBI	BB	SO HBP
1	Kim Jun-wan #14	RF	.222	5	0	1	0	0	0	2 0
2	Lee Yong-kyu #19	LF	.239	4	0	0	0	0	0	2 0
↳	Kim Whee-jip #33	SS	.250	1	0	0	0	0	0	1 0
3	Lee Jung-hoo #51	CF	.316	3	0	2	0	0	1	0 0
4	Kim Hye-seong #3	2B	.325	3	1	0	0	0	1	0 0
5	Song Sung-mun #24	3B	.247	3	0	1	0	1	1	0 0
6	Kim Woong-bin #1	DH	.235	4	0	2	0	0	0	1 0
7	Kim Jae-hyun #32	C	.400	3	0	1	0	0	0	1 0
↳	Kim Su-hwan #31	PH	.163	0	0	0	0	0	1	0 0
↳	Lee Ji-young #56	C	.263	0	0	0	0	0	0	0 0
8	Jeon Byeong-woo #13	1B	.143	4	0	1	0	0	0	1 0
9	Sin Jun-woo #5	SS	.100	2	0	0	0	0	0	1 0
↳	Lee Byung-gyu #9	PH	.211	2	0	0	0	0	0	1 0
Lotte										
		Pos	BA	AB	R	H	HR	RBI	BB	SO HBP
1	An Chi-hong #13	1B	.286	4	2	2	0	1	1	0 0
2	Hwang Seong-bin #40	CF	.239	2	1	1	0	1	0	0 0
↳	Lee Dae-ho #10	PH		0	0	0	0	0	1	0 0
↳	Shin Yoon-hoo #3	PR	.056	0	0	0	0	0	0	0 0

4	Jeon Juir-woo #6	LF	.270	3	1	1	0	1	1	0	0
5	Lee Ho-yeon #4	3B	.315	4	0	3	0	1	0	0	0
6	Peters #26	RF	.000	3	0	0	0	0	1	2	0
7	An Joong-yeol #1	C	.167	3	1	1	0	0	1	0	0
↓	Kim Min-soo #63	PR		0	0	0	0	0	0	0	0
↓	Jeong Bo-keun #42	C	.280	0	0	0	0	0	0	0	0
8	Park Seung-wook #53	SS	.272	2	0	0	0	0	0	0	0
9	Bae Seung-geun #2	2B	.500	4	0	2	0	0	0	1	0

Pitching

Kiwoom		ERA	IP	NP	R	ER	H	HR	SO	BB	HB	GS
Han Hyun-hee #63		9.00	5	86	5	5	9	0	3	1	0	31
Kim Seon-gi #49		0.00	1	19	0	0	1	0	0	2	0	0
Lee Young-jun #64		0.00	1	19	0	0	0	0	0	1	0	0
Park Seung-joo #42		0.00	1	16	0	0	1	0	0	1	0	0
Lotte		ERA	IP	NP	R	ER	H	HR	SO	BB	HB	GS
Lee In-bok #35		1.50	6	99	1	1	6	0	4	2	0	58
Na Gyun-an #43		0.00	1	19	0	0	1	0	2	0	0	0
Koo Seung-min #22		0.00	0 <sup>2</sup> / <sub>3</sub>	22	0	0	1	0	0	1	0	0

## Plays

1st Inning
2nd Inning
3rd Inning
4th Inning
5th Inning
6th Inning
7th Inning
8th Inning
9th Inning

Deciding Hit	Jeon Jun-woo (1st inning, 2 out, runner on 3rd, LF-CF gap single)
2B	Lee Ho-yeon (1st, 3rd inning), An Chi-hong (2nd inning), Kim Jae-hyun (2nd inning), Kim Jun-wan (5th inning), Lee Jung-hoo (8th inning)

<b>SB</b>	Hwang Seong-bin (2nd inning), Lee Ho-yeon (5th inning), Kim Hye-seong (6th, 8th inning)
<b>GIDP</b>	Kim Jae-hyun (4th inning), Han Dong-hui (6th inning), Lee Ho-yeon (7th inning), An Chi-hong (8th inning)
<b>Umpires</b>	Koo Myung-hwan, Moon Dong-gyoon, Lee Young-jae, Choi Young-joo
<b>Venue</b>	Sajik Baseball Stadium
<b>Attendance</b>	3769
<b>Duration</b>	3:10

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11 Attorneys for Plaintiff  
 UNITED STATES OF AMERICA  
 12

13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 YASIEL PUIG VALDES,

19 Defendant.  
 20

CR No. 22-394-DMG

GOVERNMENT'S NOTICE OF MOTION AND  
 MOTION FOR PARTIAL RECONSIDERATION  
 AND CLARIFICATION

Hearing Date: October 11, 2023  
 Hearing Time: 2:30 p.m.  
 Location: Courtroom of the  
 Hon. Dolly M. Gee

21  
 22 Plaintiff United States of America, by and through its counsel  
 23 of record, the United States Attorney for the Central District of  
 24 California and Assistant United States Attorneys Jeff Mitchell and  
 25 Dan G. Boyle, hereby files this Notice of Motion and Motion for  
 26 Partial Reconsideration, or in the alternative, for Clarification, of  
 27 this Court's August 10, 2023 Order (the "8/10 Order") denying the  
 28

1 government's Motion<sup>1</sup> for a judicial finding of a knowing breach of  
2 defendant's plea agreement in this action. See ECF No. 110. This  
3 motion is based upon the attached memorandum of points and  
4 authorities, the files and records in this case, and such further  
5 evidence and argument as the Court may permit.

6 Pursuant to the Court's standing Criminal Trial Order, the  
7 government contacted defense counsel to set a briefing schedule on  
8 this motion. The parties agreed to the following briefing schedule,  
9 which is set forth in the concurrently-filed stipulation and proposed  
10 order:

- 11 • Government's motion filed on August 24, 2023;
- 12 • Defendant's opposition to be filed by September 20, 2023;
- 13 • Government's reply to be filed by September 27, 2023; and
- 14 • Motion hearing, if any, on October 11, 2023.

15  
16 Dated: August 24, 2023

Respectfully submitted,

17 E. MARTIN ESTRADA  
18 United States Attorney

19 MACK E. JENKINS  
20 Assistant United States Attorney  
Chief, Criminal Division

21 /s/  
22 DAN G. BOYLE  
23 JEFF MITCHELL  
Assistant United States Attorneys

24 Attorneys for Plaintiff  
25 UNITED STATES OF AMERICA  
26

27  
28 <sup>1</sup> All capitalized terms have the same meaning as used in the  
government's Motion. See ECF No. 110.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. The Court Should Reconsider Its 8/10 Order<sup>1</sup>**

The Court's 8/10 order proceeded from the assumption that the contents of a Plea Agreement are "statement[s] made during plea discussions" under Federal Rule of Evidence 410(a)(4). That assumption is mistaken - plea agreements are contracts, not plea discussions. United States v. Allen, 434 F.3d 1166, 1174 (9th Cir. 2006) ("A plea agreement is a contract and is enforced as such."). Therefore, Rule 410 does not apply to any part of a plea agreement, including its Factual Basis.<sup>2</sup> And even if Rule 410 were applicable, defendant waived his rights under the rule in the Plea Agreement.

**A. Rule 410 Does Not Apply to Plea Agreements**

The plain meaning of the word "discussion" demonstrates that a plea agreement is not a plea discussion. The term "discussion" means "[t]he act of exchanging views on something" or "a debate." DISCUSSION, Black's Law Dictionary (11th ed. 2019). But a plea agreement is not a debate or an exchange of views. It is an offer by the government that a defendant may choose to either accept or reject. While plea agreements may result from discussions, they are not discussions themselves.

---

<sup>1</sup> While this Motion for Partial Reconsideration raises specific arguments in support of reconsideration the 8/10 Order, the government is not waiving or forfeiting any other previously made arguments regarding the 8/10 Order, or waiving any right to appeal, including under 18 U.S.C. § 3731.

<sup>2</sup> Defendant's Opposition to the Motion did not address what part of Rule 410 would bar admission of the Factual Basis, and the government submits that this narrow ground for reconsideration complies with Local Civil Rule 7-18. See ECF No. 110, at 15, n.10.

1 Equating plea agreements with plea discussions would be as  
2 erroneous as equating contracts with contract negotiations. And  
3 contract law has recognized a bright line between the terms of an  
4 agreement and preceding negotiations, as illustrated by the  
5 principles governing parole evidence. See, e.g., United States v.  
6 Nunez, 223 F.3d 956, 958 (9th Cir. 2000) (court interpreting plea  
7 agreements "apply contract principles, including the parole evidence  
8 rule"); United States v. Pacheco-Osuna, 23 F.3d 269, 271 (9th Cir.  
9 1994) ("[W]e have previously eschewed the invitation to consider  
10 parole evidence for the purpose of adding terms to or changing the  
11 terms of an integrated plea agreement."). Indeed, here the Plea  
12 Agreement itself recognized this distinction in the included merger  
13 clause. See ECF No. 6, ¶ 26.

14 Federal Rule of Criminal Procedure 11 also supports the  
15 distinction between plea agreements and plea discussions. It says  
16 that "[a]n attorney for the government and the defendant's attorney,  
17 or the defendant when proceeding pro se, may discuss and reach a plea  
18 agreement"--indicating that a plea agreements may result from plea  
19 discussions but are not plea discussions themselves. Fed. R. Crim.  
20 P. 11(c)(1) (emphasis added). The rule also says that a "court must  
21 not participate" in plea discussions, but with respect to plea  
22 agreements, the opposite is true: a court is required to address and  
23 carefully consider the terms of any plea agreement. See Fed. R. Crim  
24 P. 11(c)(3); see also Fed. R. Crim. P. 11, Notes of Advisory  
25 Committee on Rules-1974 Amendment ("The amendment makes clear that  
26 the judge should not participate in plea discussions leading to a  
27 plea agreement. It is contemplated that the judge may participate in  
28

1 such discussions as may occur when the plea agreement is disclosed in  
2 open court."). If a plea agreement were a "plea discussion," a court  
3 would run afoul of its Rule 11 obligations.<sup>3</sup>

4 Decisions from other courts also demonstrate that plea  
5 agreements result from plea discussions, but are not discussions  
6 themselves. See, e.g., United States v. Knight, 867 F.2d 1285, 1288  
7 (11th Cir. 1989) ("Once a plea contract is formed, the policy behind  
8 Rule 11(e)(6)--to allow a defendant to freely negotiate without fear  
9 that statements will be used against him--is no longer applicable.");  
10 United States v. Lloyd, 43 F.3d 1183, 1186 (8th Cir. 1994) ("Once  
11 Lloyd signed the agreement, negotiations terminated and Rule 11(e)(6)  
12 by its terms no longer required exclusion of his subsequent  
13 statements."); United States v. Davis, 617 F.2d 677, 685 (D.C. Cir.  
14 1979) (rejecting application of the predecessor to Rule 410 to post-  
15 agreement statements because "[e]xcluding testimony made after and  
16 pursuant to the agreement would not serve the purpose of encouraging  
17 compromise").

18 Finally, finding that a plea agreement constitutes plea  
19 "discussions" under Rule 410 does not accord with the policy  
20 underlying the rule. Both Rule 410 and its prior Rule 11 counterpart  
21 were crafted in order to facilitate the open discussion during  
22 confidential plea negotiations. See Davis, 617 F.2d at 683 (Rule  
23 intended to foster "free and open discussion between the prosecution  
24  
25

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26  
27 <sup>3</sup> This distinction is also recognized in the Plea Agreement,  
28 where the parties agreed that "the Court and the United States  
Probation and Pretrial Services Office are not parties to this  
agreement." ECF No.6, ¶ 23.

1 and the defense during attempts to reach a compromise.”).<sup>4</sup> While this  
2 end may be served by exclusion of plea discussions, protection of  
3 plea agreements does not serve this purpose; plea agreements are  
4 carefully negotiated and word-smithed by the parties and are intended  
5 to be public and judicially scrutinized.

6 **B. Defendant Validly Waived Protections under Rule 410.**

7 As explained above, Rule 410 does not apply to plea agreements.  
8 But even if it did, defendant validly waived his right to exclude the  
9 Plea Agreement under Rule 410. See ECF No. 6, at ¶ 21-22.

10 “A plea agreement is a contract and is enforced as such.”  
11 United States v. Allen, 434 F.3d 1166, 1174 (9th Cir. 2006). In  
12 accordance with this principle, both the Supreme Court and Ninth  
13 Circuit agreements that waive Rule 410 protections. In United States  
14 v. Mezzanatto, the defendant wanted to resolve his case through  
15 cooperation, and he signed a proffer agreement that allowed the  
16 government to use “statements he made during the meeting could be  
17 used to impeach any contradictory testimony he might give at trial.”  
18 513 U.S. 196, 198 (1995). When the defendant failed to provide  
19 truthful information during the proffer, the government terminated  
20 the proffer session, and the parties proceeded to trial, during which  
21 the government used his proffer statements for impeachment. Id., at  
22 199. The Supreme Court concluded that the defendant validly waived  
23 the protection of Rule 410 and that nothing prohibited him from doing  
24 so. Id. at 200-06. United States v. Rebbe is consistent with

---

25 <sup>4</sup> Both Rule 410 and prior Rule 11(e)(6) were actually intended  
26 by Congress to narrow, not expand, the scope of protection afforded  
27 to plea negotiations. See United States v. Marks, 209 F.3d 577, 582  
28 (6th Cir. 2000) (“Congress amended Rule 11(e)(6) in 1979; it did so  
in part to abrogate decisions . . . [that] manifested what Congress  
thought was a too-broad view of the plea negotiation process.”).

1 Mezzanatto: the defendant there wanted to discuss a plea with the  
2 government, and he signed a proffer agreement allowing the government  
3 to use his statements not only for impeachment but also as rebuttal  
4 evidence. 314 F.3d 402, 404 (2002). The Ninth Circuit upheld that  
5 agreement. Id., at 407-08. If a defendant can waive Rule 410 in a  
6 proffer agreement made for the purpose of resolving a case, a  
7 defendant can also waive that protection in a Plea Agreement made for  
8 the purpose of resolving a case.

9 Other courts have routinely held broad Rule 410 waivers in plea  
10 agreements. See United States v. Hahn, 58 F.4th 1009, 1011 (8th Cir.  
11 2023) (upholding Rule 410 waiver in plea agreement that allowed  
12 government to use factual basis as substantive evidence at trial);  
13 United States v. Elbeblawy, 899 F.3d 925, 934-36 (11th Cir. 2018)  
14 (same). These cases applied Mezzanatto, which made clear that  
15 defendants can validly enter into contracts, like plea agreements,  
16 and waive the protections of Rule 410 without prior court approval.  
17 To the extent that United States v. Savage, 978 F.2d 1136 (9th Cir.  
18 1992), suggests otherwise, it has been abrogated.

19 Regardless, the Plea Agreement would still be enforceable under  
20 Savage, which recognizes that plea agreements are binding prior to  
21 court approval if a party reasonably relies on the agreement. 978  
22 F.2d at 1138 ("The general rule, however, is subject to a detrimental  
23 reliance exception."). Here, the government had no way of knowing  
24 that defendant would go back on his promise to plead guilty, and the  
25 government shaped its actions around that promise. For instance, had  
26 the government known that defendant would not plead guilty, the  
27 government would certainly have sought a separate proffer from  
28

1 defendant memorializing the admissions set forth in the Factual  
2 Basis, which unquestionably could have been used against defendant.  
3 See Rebbe, 314 F.3d at 408. This reliance on the plea agreement  
4 makes it enforceable.

5 **C. Refusing to Enforce Plea Agreements Before a Rule 11**  
6 **Colloquy Would Harm Defendants**

7 Enforcing defendant's Plea Agreement is not only correct as a  
8 matter of law but also good policy. If no plea agreement exists  
9 until the Rule 11 colloquy, as the Court's 8/10 Order suggests, the  
10 government would also be able to withdraw a plea agreement any time  
11 before the Rule 11 colloquy. Fortunately, the law does not sanction  
12 such changes of heart: just like a defendant, the government must  
13 follow through on its promises once a plea agreement is signed and  
14 give a defendant the benefit of the bargain.

15 **II. If Reconsideration is Denied, the Court Should Clarify how the**  
16 **Factual Basis May Be Used for Impeachment**

17 During argument on the Motion, the government requested that the  
18 Court reserve decision on the question whether the Factual Basis  
19 could be used for impeachment purposes. See 7/19/23 Hr'g Tr., at  
20 7:16-8:4. The Court agreed, and the 8/10 Order does not address this  
21 issue. If the Court does not grant reconsideration, it should clarify  
22 that the government may use the Plea Agreement to impeach defendant  
23 at trial if defendant takes the stand and testifies inconsistently  
24 with the Factual Basis.

25 Specifically, the Court should allow the government to (1) ask  
26 defendant if he executed a written statement during the course of  
27 this case, (2) ask him if he understood that statement, (3) ask him  
28 if his counsel assisted him in reviewing that statement, and



1 (4) confront him with any portion of the Factual Basis inconsistent  
2 with his testimony.<sup>5</sup> This use of the Plea Agreement's Factual Basis  
3 is supported by the evidentiary rules, circuit and Supreme Court  
4 precedent, and notions of fundamental fairness.

5 First, the Federal Rules of Evidence allow for this impeachment.  
6 Rules 607 permits impeachment by contradiction. See United States v.  
7 Castillo, 181 F.3d 1129, 1133 (9th Cir. 1999). In fact, parties can  
8 use extrinsic evidence of a prior inconsistent statement for  
9 impeachment. Because defendant's Factual Basis is a party-opponent  
10 statement under Rule 801(d)(2), the statement would be admissible  
11 regardless of whether it met the requirements of Rule 613(b). See  
12 Fed. R. Evid. 613(b) (allowing extrinsic evidence "if the witness is  
13 given an opportunity to explain or deny the statement and an adverse  
14 party is given an opportunity to examine the witness about it, or if  
15 justice so requires"); United States v. Jackson, 882 F.2d 1444, 1449  
16 (9th Cir. 1989). Regardless, the government would seek to use the  
17 Factual Basis for impeachment only if defendant chooses to testify,  
18 so the requirements of Rule 613(b) would be met anyway. And as  
19 discussed above, Federal Rule of Evidence 410 is not applicable to  
20 plea agreements, and even if it were, defendant waived its  
21 protections by signing his Plea Agreement.

22 Second, this use of the Plea Agreement's Factual Basis for  
23 impeachment also is also supported by case law that provides a remedy  
24 for a breach of a plea agreement. For example, the Supreme Court  
25 noted in Puckett v. United States, 556 U.S. 129 (2009), that a "party

---

26 <sup>5</sup> As described in the Motion, the government would refer to the  
27 Factual Basis only as a "written statement executed during the course  
28 of this investigation" and not reference the existence of any plea  
agreement.

1 injured by [a] breach [of contract] will generally be entitled to  
2 some remedy," including where the contract in question is a plea  
3 agreement. Id. at 137. "When a defendant agrees to a plea bargain,  
4 the Government takes on certain obligations," and "[i]f those  
5 obligations are not met, the defendant is entitled to seek a remedy."  
6 Id. While a defendant may rescind a plea agreement when the  
7 government breaches it, that is not the "only possible remedy"; for  
8 example, "specific performance of the contract" is another option.  
9 Id. Similarly, when a defendant breaches a plea agreement, the  
10 government may rescind the agreement, but it may elect another  
11 remedy. Use of the Plea Agreement for impeachment is contemplated by  
12 the Plea Agreement as a reasonable remedy for a breach. See ECF No.  
13 6, at 22.

14 The election of a remedy other than rescission is consistent  
15 with Mabry v. Johnson, 467 U.S. 504, 507 (1984), which the Court  
16 cited in its 8/10 Order. In that case, the Supreme Court noted that  
17 a "plea bargain" is an "executory agreement." Id. And the Ninth  
18 Circuit has consistently held that executory contracts are voidable,  
19 not void ad initio, which means that the non-breaching party has some  
20 remedy for the breach. See, e.g., In re Robert L. Helms Constr. &  
21 Dev. Co., Inc., 139 F.3d 702, 705 (9th Cir. 1998). Allowing the use  
22 of the Factual Basis for impeachment would not trigger the  
23 constitutional concerns raised in Mabry, and would accord with how  
24 this circuit treats executory contracts.

25 Use of the Plea Agreement for impeachment is also consistent  
26 with the Supreme Court's decision in Mezzanatto and the Ninth  
27 Circuit's decision in Rebbe. Those decisions upheld agreements that  
28

1 waived Rule 410 and permitted the use of a defendant's statements for  
2 impeachment, with Rebbe allowing statements for use as rebuttal  
3 evidence as well. At minimum, Mezzanatto and Rebbe require that the  
4 government be able to impeach defendant with his Factual Basis.

5 Third, using defendant's statements in the Plea Agreement is  
6 supported by case law governing Miranda. The Factual Basis is a de  
7 facto confession, much like one in a law-enforcement interview; it is  
8 a written statement, affirmed by the defendant, admitting the conduct  
9 for which he has been charged. In cases applying Miranda, courts  
10 have held that voluntary confessions may be used for impeachment  
11 purposes even when barred from use in the government's case in chief.  
12 See, e.g., Petrocelli v. Baker, 869 F.3d 710, 724 (9th Cir. 2017), as  
13 amended (Aug. 23, 2017) ("[T]he rule is well established that a  
14 voluntary statement taken in violation of the Fifth or Sixth  
15 Amendment may be used for impeachment"); see also Oregon v. Hass, 420  
16 U.S. 714, 723-24 (1975).<sup>6</sup> It would be illogical if a defendant's  
17 confession without a lawyer present in violation of Miranda could be  
18 used for impeachment, but not one signed while advised by counsel.

19 Finally, permitting use of the Factual Basis for impeachment  
20 only would strike a fair middle-ground compromise and would not  
21

---

22 <sup>6</sup> The voluntariness of the Plea Agreement is not seriously in  
23 dispute, and the Court can assess any dispute based on the record  
24 from this motion sequence. A statement may be deemed involuntary  
25 only if a defendant demonstrates coercion. See Colorado v. Connelly,  
26 479 U.S. 157, 167 (1986); United States v. Dominguez-Caicedo, 40  
27 F.4th 938, 955 (9th Cir. 2022); see also United States v. Harper, 729  
28 F.2d 1216, 1223 (9th Cir. 1984) (even a plea entered to avoid a  
possible death sentence is "not coerced or involuntary" and that  
remains so even if the death provision later proves to have been  
unconstitutional). Here, defendant was assisted by counsel, had the  
opportunity to edit the Factual Basis, had weeks to consider the Plea  
Agreement, and certified that his signing the Plea Agreement was  
knowing and voluntary. There was no coercion here.

1 impinge on defendant's constitutional rights. A defendant has no  
2 constitutional right to lie to a jury. See Walder v. United States,  
3 347 U.S. 62, 65, (1954) ("[T]here is hardly justification for letting  
4 the defendant affirmatively resort to perjurious testimony in  
5 reliance on the Government's disability to challenge his  
6 credibility."); Pollard v. Galaza, 290 F.3d 1030, 1033 (9th Cir.  
7 2002) ("If a defendant exercises his right to testify on his own  
8 behalf, he assumes a reciprocal 'obligation to speak truthfully and  
9 accurately."). The government is not seeking to use the Factual  
10 Basis in its case-in-chief, and defendant may elect to take the stand  
11 and testify truthfully and consistent with the Factual Basis. But if  
12 defendant chooses to testify inconsistently with the Factual Basis,  
13 he will open the door for impeachment.<sup>7</sup>

14 //

15 //

---

26  
27 <sup>7</sup> To the extent defendant testifies regarding any other  
28 statements related to the plea or purported cooperation (such as his  
other gambling), fairness would permit admission, not just  
impeachment. See Fed.R.Evid. 410(b)(1).

1 **III. CONCLUSION**

2 The government respectfully requests that this Court reconsider  
3 the 8/10 Order, or alternately, permit the use of the Factual Basis  
4 for cross-examination of defendant as described herein.

5  
6 Dated: August 24, 2023

Respectfully submitted,

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16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 YASIEL PUIG VALDES,

22 Defendant.

Case No.: 2:22-cr-00394-DMG

**DEFENDANT YASIEL PUIG'S  
OPPOSITION TO MOTION FOR  
PARTIAL RECONSIDERATION**

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1 **I. INTRODUCTION**

2 The government's motion for reconsideration ("Motion") is not well taken  
3 and the Court should give it short shrift. Failing once again to address the Ninth  
4 Circuit's clear and controlling authority cited in this Court's Order, the government  
5 makes claims that are wrong on the law, misapprehending Federal Rule of Evidence  
6 410, Federal Rule of Criminal Procedure Rule 11, and the USAO's own plea  
7 agreement.

8 The government does not even attempt to satisfy the well-established standard  
9 that there be new fact or law to support its Motion, paying lip service to the  
10 requirement by claiming in a footnote that there is a "narrow ground for  
11 reconsideration" because defendant's opposition "did not address what part of Rule  
12 410 would bar admission of the factual basis." (Mot. at 1, n.2.) This is a false  
13 excuse, as the government's Motion makes clear that its proffered grounds for  
14 reconsideration have nothing to do with which part of Rule 410 is at issue.

15 Rather than address the controlling authorities on which the Court relied in  
16 finding the plea agreement unenforceable, the government's Motion presents a grab  
17 bag of ill-conceived policy arguments and inapposite authorities that stand for  
18 general propositions such as the fact that plea agreements are contracts.

19 Most troublingly, the government's Motion is rife with claims that are legally  
20 wrong—such as the assertion that Rule 410 does not apply to the factual basis  
21 statements in plea agreements, or the claim that the government cannot withdraw  
22 from the plea agreement before a defendant enters his plea. If this were a civil case,  
23 the government could be sanctioned for presenting frivolous legal contentions not  
24 warranted by existing law. Fed. R. Civ. P. 11(b)(c). Here, the government has  
25 abdicated its role in a criminal case to provide the Court accurate information as to  
26 the law and to avoid error. The Motion should be rejected.

27 ///

28 ///

## II. ARGUMENT

### A. The Government Fails to Meet the Standards for a Motion for Reconsideration

As a threshold matter, the government fails to set forth a new or intervening fact or law, or show a manifest failure to consider material facts, to meet the standard for a motion for reconsideration. Following well-established standards, Local Rule 7-18 states that, to support a motion for reconsideration, the moving party must show: (1) “a material difference in fact or law from that presented to the Court that, in the exercise of reasonable diligence, could not have been known to the [moving] party at the time the Order was entered,” (2) “new material facts or a change of law occur[ed] after the Order was entered,” or (3) “a manifest showing of a failure to consider material facts presented to the Court before the Order was entered.” L.R. 7-18. The government does not even try to meet one of these three grounds, as it offers no intervening law, no new facts, and does not explain why it would be manifestly unjust if the Court does not revisit its Order. *See Navajo Nation v. Confederated Tribes and Bands of Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003) (“Reconsideration is indicated in the face of the existence of new evidence, an intervening change in the law, or as necessary to prevent manifest injustice.”).

The government proffers only one reason for reconsideration, stating in a footnote that, “Defendant’s Opposition to the Motion did not address what part of Rule 410 would bar admission of the Factual Basis[.]” (Mot. at 3, n.2.) This is a red herring. There was no confusion regarding which portion of Rule 410 applied in this case, and that remains true, as there is no argument in the government’s Motion that suggests any confusion on this point. The government does not in fact intend to quibble about what portion of Rule 410 applies; rather, the government seeks to present a brand new argument – that Rule 410 does not apply at all.

1 The government's attempt to raise this argument now is improper. A motion  
2 for reconsideration "may not be used to raise arguments or present evidence for the  
3 first time when they could reasonably have been raised earlier in the litigation."  
4 *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). The entire purpose of the  
5 government's original motion to admit the factual basis (*see* Dkt. 110)<sup>1</sup> was to  
6 invoke the "knowing breach" language in paragraph 22 of the plea agreement and  
7 seek to enforce the Rule 410 waiver in that same paragraph. Whether the Rule 410  
8 waiver was enforceable and valid was raised and thoroughly briefed. (*See* Original  
9 Mot. at 9-15, Original Opp. at 1, 6-9, 9-17; Original Reply at 4-6. The government  
10 now attempts to present a new argument on the same subject – that Rule 410 does  
11 not apply to plea agreements. In support of this new argument, the government  
12 presents no intervening law, no new facts, and provides no basis for reconsideration.

13 The government also violates the rule prohibiting the repetition of prior  
14 arguments. A motion for reconsideration cannot "in any manner repeat any oral or  
15 written argument made in support of, or in opposition to, the original motion." L.R.  
16 7-18. But the government dedicates an entire section of its Motion rearguing that  
17 defendant "validly waived" protections under Rule 410. (*See* Mot. at 4-6.) This  
18 argument exactly repeats the government's prior claim. (*See* Original Mot. at 9-10,  
19 12-13 (arguing that Rule 410 waivers are enforceable and that Puig knowingly  
20 waived Rule 410 protections); Original Reply at 7-10 (arguing Puig knowingly and  
21 voluntarily signed the plea agreement and agreed to the Rule 410 waiver therein).)  
22 The government's Motion therefore directly contravenes Local Rule 7-18.

23  
24  
25 <sup>1</sup> Puig refers to the government's motion (Dkt. 110) as the "Original Motion,"  
26 Puig's opposition (Dkt. 128) as the "Original Opposition," and the government's  
27 reply (Dkt. 135) as the "Original Reply." Puig refers to the Court's August 10, 2023  
28 Order Denying Motion to Find Knowing Breach of Plea Agreement and Amending  
Order Granting Motion to Find Breach of Plea Agreement (Dkt. 143) as the "8/10  
Order."

1 Finally, buried under the guise of its Motion for “partial” reconsideration is a  
 2 request that the Court reach a new issue that it expressly reserved at the  
 3 government’s request: whether the factual basis may be used for impeachment at  
 4 trial. The government’s flip-flopping and sloppy presentation of issues is confusing,  
 5 but Puig has no qualms with dispensing of this issue ahead of trial. As explained  
 6 below, the logic of the court’s 8/10 Order applies in full force to the government’s  
 7 request to use the factual basis as impeachment evidence.

8 **B. The Government Presents No Reason the Court Should Revisit the**  
 9 **8/10 Order**

10 **1. The Government’s New Claim that Rule 410 Does Not Apply**  
**to Plea Agreements Is Wrong and Beside the Point**

11 As an initial matter, the government's claim regarding Rule 410 does not rely  
 12 on new law or new fact, and could have been raised in its Original Motion or  
 13 Original Reply, or at oral argument. It therefore is not a proper basis for a motion  
 14 for reconsideration and the Court should reject it on that basis. L.R. 7-18.

15 The claim is also an irrelevant one, in that the Court’s ruling does not turn on  
 16 whether Rule 410 applies to plea agreements. The Court’s ruling is that “until the  
 17 Court accepts and enters a guilty plea, a plea agreement is not binding on the  
 18 parties.” (8/10 Order at 3.) Accordingly, under this Court’s ruling, the entire  
 19 agreement is unenforceable, which would render all parts of the agreement –  
 20 including paragraph 2(b), where the defendant agreed not to contest facts in the  
 21 agreement – unenforceable. Under the Court’s ruling, defendant simply has not  
 22 agreed to the factual basis in any respect. Accordingly, to the extent the government  
 23 has attempted to circumvent Rule 410 and the operation of Rule 11 through the  
 24 “knowing breach” language of paragraph 22, that provision, too, is unenforceable  
 25 because the parties are not “bound by their promises in the agreement.” (8/10 Order  
 26 at 5.)

27 Viewed through this lens, it does not matter whether Rule 410 applies to the  
 28 factual basis of a plea agreement. Here, the statement at issue is not a verbal

1 statement by the defendant – it is a fact statement written by the government into the  
 2 plea agreement.<sup>2</sup> The only thing connecting the defendant to that statement are the  
 3 obligations in the plea agreement, which the Court has found nonbinding. (8/10  
 4 Order at 5 (“there are no binding obligations”). Accordingly, the Court need not  
 5 decide, as a general matter, whether Rule 410 applies to fact statements in plea  
 6 agreements.

7 In any event, the government is wrong that Rule 410 does not apply to the  
 8 factual basis, which is a “plea statement” under Rule 410 and Fed. R. Crim. P. 11(f).  
 9 The government cites no case that has found that Rule 410 does not apply to the fact  
 10 statements in a plea agreement, suggesting instead that the Court should simply rely  
 11 on the Black’s Law Dictionary definition of the word “discussion” and the parole  
 12 evidence rule to find that Rule 410 does not apply. (*See* Mot. at 6-7.)

13  
 14  
 15 <sup>2</sup> The government’s claim that the factual basis is “carefully negotiated and word-  
 16 smithed” by the parties (Opp. at 4) simply “does not reflect the reality of the  
 17 bargaining table.” *United States v. Osorto*, 445 F. Supp. 3d 103, 109 (N.D. Cal.  
 18 2020); *see United States v. Mezzanatto*, 513 U.S. 196, 216 (1995)(Souter, J.,  
 19 dissenting ) (“As the Government conceded... defendants are generally in no  
 20 position to challenge demands for these waivers, and the use of waiver provisions as  
 21 contracts of adhesion has become accepted practice.”) In this district, the factual  
 22 basis section of the plea agreement has gone far beyond the function provided for it  
 23 by Rule 11 and the Supreme Court that “the sentencing judge . . . develop, on the  
 24 record, the factual basis for the plea, as, for example, by having the accused describe  
 25 the conduct that gave rise to the charge.” *Santobello v. New York*, 404 U.S. 257, 261  
 26 (1971). Rather, the government drafts a robust and often lengthy narrative of what  
 27 facts it believes it would offer at trial – purported facts that go far beyond what is  
 28 necessary to satisfy the elements and would more appropriately be called – as some  
 judges refer to it – the “government’s offer of proof.” The government then asks the  
 defendant to accede to the government’s narrative statement, and the defendant has  
 limited leverage to change it. A defendant’s agreement to the statement therefore  
 reflects no more than what the provisions of the plea agreement say: that the  
 defendant agreed to it for purposes of the plea, agreed not to contest it, and agreed  
 that it met the elements of the offense.



1 The government is incorrect in claiming that the text of Rule 11 “supports the  
 2 distinction between plea agreements and plea discussions.” (Mot. at 2.) Citing only  
 3 Rule 11 (c)(1) and (3), the government ignores the applicable portion of Rule 11 –  
 4 Rule 11(f) – which broadly includes “a plea, a plea discussion, and any related  
 5 statement” within the ambit of statements protected by Rule 410. Contrary to the  
 6 government’s contention,<sup>3</sup> the Advisory Committee Notes to Rule 11 make clear  
 7 that Rule 11(f) (formerly Rule 11(e)(6)(C)) was intended to exclude as inadmissible  
 8 any statement made in the course of plea discussions with the prosecution, including  
 9 “admissions by the defendant when he makes his plea in court” and “also  
 10 *admissions made to provide the factual basis*,” and this rule “is not limited to  
 11 statements made in court.” Fed. R. Crim. P. 11, Advisory Committee Notes, 1979  
 12 Amendments (emphasis added). The Advisory Committee further cited with  
 13 approval Commentary from the ALI stating that the “fact that the defendant or his  
 14 counsel and the prosecuting attorney engaged in plea discussion or made a plea  
 15 agreement should not be received in evidence,” and that the rule applies “to  
 16 discussion *and agreements* with the prosecuting attorney.” *Id.* (emphasis added).

17 Rule 410 is similarly expansive, covering not only initial discussions (which  
 18 the government defines to be an “exchange of views” (Mot. at 1) but also evidence  
 19 of (1) a guilty plea that was later withdrawn; (2) a nolo contendere plea; (3) a  
 20 statement made during a proceeding on either of those pleas under Federal Rule of  
 21 Criminal Procedure 11; and (4) a statement made during plea discussions. Rule  
 22 410(a).<sup>4</sup> Thus, temporally speaking, Rule 11(f) and Rule 410 include the whole  
 23

24 <sup>3</sup> To the extent that the 1979 Amendments narrowed Rule 11(e)(6), it was not, as the  
 25 government contends (Mot. at 4, n.4) to “narrow the scope of protection” over plea  
 26 negotiations generally, but specifically to cabin the application of the rule where  
 there were “confrontations between suspects and law enforcement agents.”

27 <sup>4</sup> The government cites no authority for the claim that “contract law” recognizes a  
 28 “bright line between the terms of an agreement and preceding negotiations” (Opp. at



1 process – from initial discussions through the colloquy at a plea hearing. In  
2 *Mezzanatto*, 513 U.S. at 200, the Supreme Court referred to Rule 410 and Rule  
3 11(f) together as the “plea-statement Rules,” and all plea statements –including plea  
4 agreements – fall under them. The government’s unsupported claim that there is a  
5 temporal line between “plea discussions” and a “plea agreement” therefore does not  
6 hold water (*see* Opp. at 2) and the Court should reject the government’s claim that  
7 Rule 410 does not apply to plea agreements.

8 Finally, the government’s argument ignores its own cited cases. Later in its  
9 brief, the government cites two cases for the proposition that courts have upheld  
10 Rule 410 waivers in plea agreements. (Opp. at 5.) Of course, the fact that the plea  
11 agreements in these cases included Rule 410 waivers – as does the USAO’s plea  
12 agreement – itself proves that Rule 410 applies to the plea agreement statements.  
13 The issue presented in *United States v. Elbeblawy*, 899 F.3d 925, 935 (11th Cir.  
14 2018) was whether the court had erred in admitting parts of the plea agreement at  
15 trial; the defendant argued that the plea statements were subject to, and barred by,  
16 Rule 410. The fact that the government sought to enforce the waiver, rather than  
17 challenge the applicability of Rule 410 to the statements, was a concession that the  
18 plea agreement was otherwise subject to Rule 410. *See also United States v. Hahn*,  
19 58 F.4th 1009, 1012 (8th Cir. 2023) (enforcing Rule 410 waiver to admit parts of  
20 plea agreement); *United States v. Mitchell*, 633 F.3d 997, 1006 (10th Cir. 2011)  
21 (analyzing admissibility of “statements from the plea agreement and plea colloquy”  
22 in light of Rule 410 waiver). The discussion in each of these cases refutes the  
23 notion that Rule 410 does not apply to statements in plea agreements.

24  
25  
26 2) but in any event that claim fails when the agreement at issue is a plea agreement  
27 in a criminal case that is subject to Rule 11 and Rule 410. As the Supreme Court  
28 has said, while plea agreements are “essentially contracts,” “the analogy may not  
hold in all respects.” *Puckett v. United States*, 556 U.S. 129, 137 (2009).

**2. The Court's 8/10 Order Did Not Reach the Issue Whether Puig Validly Waived Rule 410, So There Is Nothing for this Court to Reconsider**

In the next section, the government argues that the 8/10 Order should be reconsidered because the defendant “validly waived” Rule 410’s protections. Whether Puig’s waiver was valid turns on whether his waiver was “knowing and voluntary,” which depends on “the totality of the circumstances, including the background, experience, and conduct of defendant.” *United States v. Bautista-Avila*, 6 F.3d 1360, 1365 (9th Cir. 1993); *see also United States v. Plugh*, 648 F.3d 118, 127 (2d Cir. 2011)).

This issue was fully briefed by the defense in the Original Opposition, with supporting evidence. (*See* Original Opp. at 9-17, and Declarations of Anthony Fernandez (Dkt. 128-5) and Dr. Paola Suarez (Dkt. 132).) The government also had a full opportunity to respond to the issue of whether the waiver was knowing and voluntary. (Original Reply at 7-10.) The Court ultimately decided not to reach this issue, so there is nothing for this Court to reconsider.

Although the government presents the issue as one of validity of the waiver, the government fails to address Puig’s particular arguments concerning validity, citing instead three new cases – *Mezzanatto*, *Elbeblawy*, and *Hahn* – for the general proposition that some courts have upheld Rule 410 waivers to permit plea statements to be introduced at trial. None of these cases represents “a change of law” that occurred “after the [Court’s 8/10] Order was entered” (L.R. 7-18) and they therefore should be disregarded. They also do not alter this Court’s conclusion that neither party has “located any Ninth Circuit authority holding that Puig is bound by his Rule 410 waiver even if his plea is not accepted by the Court.” (8/10 Order at 5.)<sup>5</sup> Further, these cases do not shed any light on whether the Rule 410 waiver in

<sup>5</sup> *Mezzanatto* involved a proffer interview statement, not a plea agreement statement (513 U.S. 199), so there was no issue of court acceptance or enforceability. (The

1 Puig's plea agreement was knowing and voluntary based on his background,  
2 experience, and conduct, so they do not address the validity issue presented here.

3 The government also argues that the Rule 410 waiver in the agreement should  
4 be enforced because the government claims it relied on the agreement. (Mot. at 5.)  
5 This point also has nothing whatsoever to do with whether the waiver is valid and is  
6 therefore under the wrong heading. What the government is in fact arguing is that  
7 the plea agreement should be enforced due to detrimental reliance – a new argument  
8 about the enforceability of the plea agreement, rather than an argument about the  
9 validity of the waiver. This is yet another argument that the government could have  
10 made before and therefore should be barred on reconsideration. L.R. 7-18.

11 In any event, the government is wrong here, too: there are many cases that  
12 discuss detrimental reliance in the context of a plea agreement, and the government  
13 fails to apply them because they do not support it. *See United States v. Savage*, 978  
14 F.2d 1136, 1138 (9th Cir. 1992) (finding that defendant did not detrimentally rely  
15 where he did not “plead guilty based on the agreement” or “provide any information  
16 or other benefit to the government based on the agreement.”); *United States v.*  
17 *Papaleo*, 853 F.2d 16, 18 (1st Cir. 1988) (permitting government to unilaterally  
18 withdraw from plea agreement where it had not been approved by the court nor  
19

20 same is true for *United States v. Rebbe*, 314 F.3d 402, 406 (9th Cir. 2002) (Mot. at  
21 6.) *Mezzanatto* also predates *United States v. Alvarez-Tautimez*, 160 F.3d 573, 576  
22 (9th Cir. 1998), on which this Court relied. (8/10 Order at 4.) In both *Elbeblawy*  
23 and *Hahn*, however, the Eleventh and Eight Circuits, respectively, affirmed the  
24 admission of a factual basis pursuant to a Rule 410 waiver even though the court  
25 had not accepted the defendant's plea. These holdings are at odds with the Ninth  
26 Circuit's rule that plea agreements are “not binding on the parties until [the Court's]  
27 approval.” (8/10 Order at 5 (citing cases).) These cases may also be distinguishable  
28 on other bases: it is unclear whether the defendants challenged the enforceability of  
the plea agreement – rather than its voluntariness, which both defendants disputed –  
and it is unclear whether the plea agreements were Rule 11(c)(1)(A) (rather than  
(c)(1)(B)) agreements, which under Rule 11(c)(3)(A) the court first must consider  
and accept. In any event, the Ninth Circuit cases control.

1 relied upon by the defendant; no detrimental reliance where defendant did not enter  
2 a plea, forgo a jury trial or otherwise detrimentally rely on government's promise to  
3 drop two charges); *United States v. McGovern*, 822 F.2d 739, 746 (8th Cir. 1987)  
4 (even though defendant was not placed "in the status quo in the sense that he could  
5 retrieve his year of cooperation with the United States Attorney" the court  
6 nevertheless found no detrimental reliance as defendant's cooperation was not  
7 referenced at trial); *United States v. Munoz*, 455 F. App'x 772, 773 (9th Cir. 2011)  
8 (finding the defendant had not established detrimental reliance where he did not  
9 enter a plea or provide information, and the government received no benefit); *United*  
10 *States v. Solorio-Gonzalez*, 188 F. App'x 631, 635 (9th Cir. 2006) (parties' oral plea  
11 agreement was not binding because it was not approved by the court and defendant  
12 did not detrimentally rely, as his confession and proffer preceded the agreement).

13 Considering these examples, the government's claim that it relied on the plea  
14 agreement fails. The government was not detrimentally prejudiced by Puig's  
15 decision to withdraw. In the agreement, the government had limited obligations:  
16 agreeing not to contest the facts, not to charge defendant with a violation of 18  
17 U.S.C. § 1503, and to recommend a two-level reduction in the Sentencing  
18 Guidelines. (Plea Agreement ¶ 3.) But the government, just like Puig, has been  
19 "relieved of its obligations under the Agreement" (8/10 Order at 5) and the  
20 government has now charged Puig with a violation of Section 1503.<sup>6</sup> Accordingly,  
21 like the defendant in *Papaleo*, the government is in no "worse position than if no  
22 offer had ever been made by the government." 853 F.2d 16 at 18. The parties have  
23 been returned to the status quo ante;<sup>7</sup> thus, there is no reliance.

24 \_\_\_\_\_  
25 <sup>6</sup> The government also added additional facts not in the factual basis or information  
26 included with the plea agreement. (*See* Ind. ¶ 3.)

27 <sup>7</sup> The government claims that, had it known that defendant was not going to plead  
28 guilty, the government would have sought a proffer from the defendant. (Mot. at 5-  
6.) This is not a reliance claim; rather, it is mere speculation about how the

### 3. The Government Fails to Understand Rule 11 and Seeks to Deny the Court Its Gatekeeping Role in the Plea Process

Finally, without a single citation to authority, the government makes an ill-conceived policy argument that refusing to enforce a plea agreement prior to a Rule 11 colloquy would hurt defendants, because the government could then back out. (Mot. at 6.) The government clearly has done no research on this point, as it glibly asserts that “the law does not sanction such changes of heart” when in fact the law is clear that both the government and the defendant can back out of a Rule 11(c)(1)(A) plea agreement if it has not been accepted by the Court. *See United States v. Saecho*, 73 F. App’x 1000, 1001 (9th Cir. 2003) (district court did not err by granting the government’s motion to withdraw from plea agreement and refusing specific enforcement); *Gov’t of Virgin Islands v. Scotland*, 614 F.2d 360, 362 (3d Cir. 1980) (declining to order specific performance where government changed terms of plea offer after defendant agreed to initial offer); *United States v. Gonzalez*, 918 F.2d 1129, 1133 (3d Cir. 1990) (permitting government to withdraw from package deal plea agreement when co-defendant refused to plead and refusing defendant’s request for specific enforcement of the withdrawn plea agreement); *see generally People v. Rhoden*, 75 Cal. App. 4th 1346, 1352, 89 Cal. Rptr. 2d 819 (1999) (collecting cases) (“The great weight of case law supports the position that a prosecutor may withdraw from a plea bargain before a defendant pleads guilty with court approval or otherwise detrimentally relies on that bargain.”).

\_\_\_\_\_

government could have structured the plea negotiation process differently to lock defendant into the Rule 410 waiver even though he withdrew from the agreement. The government’s speculation fails to take into account that the defendant may not have agreed to a proffer, and, even if he had done so, his own statements certainly would not have been co-extensive with the government’s factual basis narrative. In any event, the government’s complaint is that it did not receive a benefit under the agreement, but that is not reliance – it is simply the result of fact that the parties are not “bound by their promises in the Agreement.” (8/10 Order at 5.)



1 Indeed, the government fails even to acknowledge the very authorities this  
2 Court relied upon in the 8/10 Order that make it clear that the parties' ability to  
3 withdraw is reciprocal. The Ninth Circuit stated clearly in *United States v. Savage*,  
4 978 F.2d 1136 (9th Cir. 1992): "Neither the defendant ***nor the government*** is bound  
5 by a plea agreement until it is approved by the court." 978 F.2d at 1138 (emphasis  
6 added); *see also United States v. Kuchinski*, 469 F.3d 853, 857 (9th Cir. 2006)  
7 ("Kuchinski insists that once the government entered into a plea agreement, it was  
8 absolutely bound to the agreement's terms, even before the district court accepted  
9 the agreement. He is wrong."); *United States v. Washman*, 66 F.3d 210, 212–13 (9th  
10 Cir. 1995), abrogated in part on other grounds by *United States v. Hyde*, 520 U.S.  
11 670 (1997) ("Either party should be entitled to modify its position and even  
12 withdraw its consent to the bargain until the plea is tendered and the bargain as it  
13 then exists is accepted by the court." (citing *Savage* (internal quotation omitted))).

14 Further, the government's conclusory and unsupported policy arguments  
15 prove that it does not understand Rule 11 and the policies behind it. As discussed in  
16 Puig's Original Opposition, the extensive plea agreement procedures to which the  
17 parties and this Court are accustomed are set forth in Rule 11, amended in 1975 to  
18 give "explicit recognition to the validity of plea bargaining" and to "move the  
19 results of the discussions into open court. The changes were 'designed to prevent  
20 abuse of plea discussions and agreements by providing appropriate and adequate  
21 safeguards.'" Wright & Miller: 1A Fed. Prac. & Proc. Crim. § 171 (History of the  
22 Rule) (5th ed.) (citing 1975 Advisory Committee Notes). These safeguards include  
23 the District Court's detailed Rule 11(b) colloquy prior to accepting a plea, and its  
24 review and discretion to accept or reject a plea agreement under Rule 11(c)(3)(A).

25 The instant plea agreement arises under Rule 11(c)(1)(A) because the  
26 agreement includes a charge bargaining agreement (that is, the government's  
27 agreement to forego a potential charge in return for a guilty plea). Under Rule  
28

1 11(c)(3), the Court may accept the agreement, reject it, or defer a decision until the  
2 review of the presentence report. As explained by the Supreme Court, Rule 11:

3 envision[s] a situation in which the defendant performs his side of the  
4 bargain (the guilty plea) before the Government is required to perform  
5 its side (here, the motion to dismiss four counts). If the court accepts the  
6 agreement and thus the Government's promised performance, then the  
7 contemplated agreement is complete and the defendant gets the benefit  
8 of his bargain. But if the court rejects the Government's promised  
9 performance, then the agreement is terminated and the defendant has the  
10 right to back out of his promised performance (the guilty plea), just as a  
11 binding contractual duty may be extinguished by the nonoccurrence of a  
12 condition subsequent.

13 *Hyde*, 520 U.S. at 677–78 (1997) (citation omitted). The defense respectfully  
14 submits that Rule 11, which provides the Court a “critical role in the process,”  
15 *United States v. Ocanas*, 628 F.2d 353, 358 (5th Circuit 1980), has the incentives  
16 right and is good policy.

### 17 **C. The Plea Agreement's Factual Basis Cannot Be Used for** 18 **Impeachment**

19 At oral argument for the Original Motion, the government asked the Court to  
20 expressly reserve ruling on the use of the factual basis as impeachment evidence for  
21 the motion *in limine* stage, and the Court agreed. Now, embedded in its Motion, the  
22 government asks the Court to rule on whether the factual basis can be used for  
23 impeachment. The answer is “no” for the same reasons the factual basis cannot be  
24 used in the government's case in chief – Rule 410 and 11(f) bar its use for  
25 impeachment.

26 As an initial matter, this Court has found the plea agreement unenforceable as  
27 a matter of law. (8/10 Order at 5.) Given that the contract is unenforceable, then  
28 there is in fact no “statement” of Puig at all to use for impeachment. Under Fed. R.  
Evid. 801(d)(2), a “statement” is a person's oral statement, written assertion, or  
nonverbal conduct, if the person intended it as an assertion.” But Puig did not write  
the factual statement in the plea agreement and, as discussed above, the only basis to  
contend that he adopted the statement was by virtue of the provisions in the plea

1 agreement. *See* Fed. R. Evid. 801(d)(2)(B). If those provisions are not enforceable,  
2 there is no other basis to attribute the statement to him.

3 The government seeks to relitigate the Court's enforceability ruling through  
4 its argument that the use of the factual basis for impeachment is a reasonable  
5 remedy for breach. (Mot. at 7-8.) This merely repeats the argument in the  
6 government's Original Motion, in which it asked this Court to find a "knowing  
7 breach" and apply paragraph 22 of the Plea Agreement. (Original Motion (Dkt.  
8 110) at 9.) But this Court has found that neither party is "bound by their promises  
9 in the Agreement" (8/10 Order at 5), and thus there can be no breach. As this Court  
10 stated, "[i]mplicit in [its initial breach] ruling was a finding that the parties were  
11 bound by their promises in the Agreement—a finding that was erroneous under the  
12 clear and binding authority cited above." (*Id.*) Without a finding of breach, there is  
13 nothing to remedy. *Pro Water Solution, Inc. v. Angie's List, Inc.*, 457 F. Supp. 3d  
14 845, 850-51 (C.D. Cal. 2020) (defendant's breach is an essential element for breach  
15 of contract claim).

16 The third argument the government raises is that the Federal Rules of  
17 Evidence, specifically Rules 607, 613, and 801(d)(2), permit impeaching Puig with  
18 the factual basis. (Mot. at 7.) This is incorrect; Rule 410 – which does apply to plea  
19 statements (*see supra* at 5-7), is a rule of exclusion that bars the admission of  
20 otherwise admissible evidence under the Rules. *See* Fed. R. Evid. 410, Advisory  
21 Committee Notes, 1972 Proposed Rules (Rule 410 is an "exclusionary rule"  
22 applicable only "against the accused").

23 The case law makes clear that the factual basis cannot be introduced to  
24 impeach Puig because Rule 410 bars the use of plea statements for impeachment  
25 purposes. In *Mezzanatto*, for example, the Supreme Court held that a defendant can  
26 waive Rule 410's protections barring evidence of plea for impeachment. 513 U.S. at  
27 204. Implicit in that ruling is that Rule 410 does in fact bar the use of plea  
28 statements for that purpose because the purpose of waivers is to abandon a right.



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1 *United States v. Olano*, 507 U.S. 725, 733 (1993) (“[W]aiver is the intentional  
 2 relinquishment or abandonment of a known right.”) (citation omitted). In fact, in the  
 3 Ninth Circuit’s opinion in *Mezzanatto*, the court explicitly held that Rule 410 bars  
 4 the use of plea negotiation statements to impeach a defendant. *United States v.*  
 5 *Mezzanatto*, 998 F.2d 1452, 1454 (9th Cir. 1993) (reversed on other grounds by  
 6 *Mezzanatto*, 513 U.S. 196 (1995)) (the text and legislative history of Rule 410 and  
 7 Rule 11 establish that plea statements cannot be used for impeachment). The  
 8 Supreme Court reversed only on the narrow ground that Rule 410 protections can be  
 9 contracted around. 515 U.S. at 204. The Second, Tenth, and D.C. Circuits all agree  
 10 that Rule 410 bar the use of plea discussions for impeachment. *See United States v.*  
 11 *Lawson*, 683 F.2d 688, 693 (2d. Cir. 1982); *United States v. Acosta-Ballardo*, 8 F.3d  
 12 1532, 1536 (plea statements are inadmissible as impeachment under Rule 11);  
 13 *United States v. Wood*, 879 F.2d 927, 937 (D.C. Cir. 1989) (without a waiver, plea  
 14 statements are inadmissible as impeachment evidence under Rule 410 and Rule 11).  
 15 In sum, Rule 410 applies with full force the Factual Basis and commands the  
 16 exclusion of it for impeachment.

17 In fact, as explained in *Acosta-Ballardo*:

18 Commentators agree that Rule 410 and Rule 11 prohibit use of statements  
 19 made in the course of plea discussions for impeachment purposes. “[T]he  
 20 legislative history makes it clear beyond any doubt that Congress, in deleting  
 21 the impeachment provision from the original rule, intended that Rule 410  
 22 should bar the use of pleas and plea related statements for impeachment.” 23  
 23 Charles A. Wright & Kenneth W. Graham, Jr., *Federal Practice and*  
 24 *Procedure: Evidence* § 5349 at 416 (1980) (footnotes omitted). “Statements  
 made by a defendant in connection with a plea or an offer to plead may not be  
 used substantively or for impeachment in any civil or criminal proceeding  
 against the person who made the plea or offer.” 2 Jack B. Weinstein and  
 Margaret A. Berger, *Weinstein’s Evidence* ¶ 410[02] at 410–30 (1992)  
 (footnotes omitted).

25 8 F.3d at 1535; *see also Lawson*, 683 F.2d at 693 (Congress expressly intended “to  
 26 preclude use of statements made in plea negotiations for impeachment purposes . .  
 27 .[.] [t]heir inadmissibility under Rules 410 and 11(e)(6) is thus beyond serious  
 28 dispute”); *see also Wood*, 879 F.2d at 936–37 (“In considering these rules, Congress

1 had debated and rejected proposals that statements made in connection with an offer  
2 to plead guilty be available for impeachment purposes.”).

3 The factual basis should be rejected as impeachment evidence on Rule 403  
4 grounds as well because, as discussed in the Original Opposition, if admitted for that  
5 purpose, the inevitable result is a trial-within-a-trial about the circumstances  
6 surrounding the plea. Rule 613(b) commands that Puig must be “given an  
7 opportunity to explain or deny the statement . . .” Fed. R. Evid. 613(b); *see United*  
8 *States v. Cutler*, 676 F.2d 1245, 1249 (9th Cir. 1982) (“Rule 613(b) requires that . . .  
9 the opposite party must be afforded the opportunity to interrogate him thereon[.]”)  
10 (cleaned up). Here, there is a lot to explain for the jury to properly understand why  
11 the factual basis exists. The evidence involved will likely be additional fact  
12 witnesses, additional lines of expert inquiry regarding Puig’s mental state, and even  
13 statements attorneys made across the bargaining table. The result will be a trial  
14 where the jury is focused on the veracity of one piece of evidence rather than  
15 resolving the factual issues relevant to each essential element of the charged crimes.  
16 Admission of the factual basis for any purpose would likely double the length of the  
17 trial, unduly burdening the jury, the Court, and the parties.

### 18 **III. CONCLUSION**

19 For the reasons stated herein, the government’s motion for reconsideration  
20 should be denied as procedurally barred, or, in the alternative, denied on its merits.

21 DATED: September 20, 2023 WAYMAKER LLP

22  
23  
24 By: /s/ Keri Curtis Axel

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 12

13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 YASIEL PUIG VALDES,

19 Defendant.  
 20

CR No. 22-394-DMG

GOVERNMENT'S REPLY IN SUPPORT OF  
 NOTICE OF MOTION AND MOTION FOR  
 PARTIAL RECONSIDERATION AND  
 CLARIFICATION

Hearing Date: October 4, 2023  
 Hearing Time: 2:30 p.m.  
 Location: Courtroom of the  
 Hon. Dolly M. Gee

21  
 22  
 23 Plaintiff United States of America, by and through its counsel  
 24 of record, the United States Attorney for the Central District of  
 25 California and Assistant United States Attorneys Jeff Mitchell and  
 26 Dan G. Boyle, hereby files this Reply in Further Support of its  
 27 Motion for Partial Reconsideration, or in the alternative, for  
 28 Clarification (the "Reconsideration Motion"), see ECF No. 148, of

1 this Court's August 10, 2023 Order (the "8/10 Order") denying the  
2 government's Motion for a judicial finding of a knowing breach of  
3 defendant's plea agreement in this action. See ECF No. 143. This  
4 reply is based upon the attached memorandum of points and  
5 authorities, the files and records in this case, and such further  
6 argument as the Court may permit.

7  
8 Dated: September 27, 2023

Respectfully submitted,

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13 Chief, Criminal Division

14 /s/

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19 UNITED STATES OF AMERICA  
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2 MEMORANDUM OF POINTS AND AUTHORITIES

3 **I. Introduction**

4 There is nothing frivolous about the Reconsideration Motion, and  
5 defense counsel should avoid bandying about words like "sanction[s]"  
6 when confronting arguments that are supported by the plain text of  
7 the Federal Rules. See Opp., at 1. Briefs are filed for the court,  
8 not the media, and parties should resist the temptation to substitute  
9 rhetoric for legal argument. Nor is it appropriate to make sweeping  
10 and unsupported accusations about the change of plea practices in  
11 this district - which impugn both counsel and the courts. See Opp. at  
12 5, n.2. Such categorical assertions do not advance defendant's  
13 position or the Court's consideration of this significant issue.

14 On the merits, defendant's arguments against reconsideration are  
15 not persuasive. His position boils down to the claim that the  
16 purported absence of a binding contract makes the document he signed  
17 and words he adopted simply disappear. No such magic exists. Whether  
18 or not the Plea Agreement<sup>1</sup> has binding effect, defendant adopted its  
19 Factual Basis in writing. That Factual Basis is therefore an  
20 admissible, non-hearsay statement by a party opponent that the  
21 government should be permitted to introduce at trial. The ability or  
22 inability to invoke a contractual remedy has no bearing on the  
23 admissibility of defendant's adopted statement. However, treating the  
24 plea agreement as a nullity is also error. The Supreme Court has left  
25 no doubt that plea agreements are contracts, and neither defendant  
26 nor this Court has the authority to unilaterally nullify the contract

27

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28 <sup>1</sup> All capitalized terms have the same meaning as used in the  
government's original motion. See ECF No. 110

1 defendant signed. Under either the rules of evidence or the rules of  
2 contract law, this Court should reconsider its prior ruling. At a  
3 minimum, the Court should clarify that the government will be  
4 permitted to admit the Factual Basis of the Plea Agreement for  
5 purposes of impeachment.

6 **II. Argument**

7 **A. The Government Has Met the Standard for Reconsideration**

8 As addressed in the government's Reconsideration Motion, on  
9 January 6, 2023, the Court issued an order finding that defendant had  
10 breached the Plea Agreement. See ECF No. 51 (the "Breach Order").  
11 Defendant has conceded that he did not raise the Fagan/Savage line of  
12 cases in the motion practice preceding the Breach Order (ECF No. 128,  
13 at 8, n.4), nor did he argue that the Plea Agreement was  
14 unenforceable at that time. To the contrary, he made numerous  
15 assertions that were inconsistent with his current position that the  
16 Plea Agreement was and is a legal nullity. See ECF No. 135, at 1-2  
17 (summarizing argument). As such, the government's motion seeking a  
18 finding of a knowing breach (ECF No. 110) proceeded from the  
19 reasonable position that a breach of the Plea Agreement had already  
20 been found - because that is exactly what the Breach Order held.

21 When defendant first raised the Fagan/Savage line of cases in  
22 his opposition to the government's motion, the government responded  
23 and addressed this authority directly, but was limited to responding  
24 to the contents of defendant's Opposition. It is black-letter law  
25 that a party cannot raise new arguments on reply. See United States  
26 v. Zamarron, 2014 WL 683826, at \*1 n.2 (C.D. Cal. Feb. 21, 2014)  
27 ("The Ninth Circuit has consistently held that where new arguments  
28

1 and new evidence is submitted for the first time in a reply brief,  
2 the arguments and evidence may be stricken."); In re Hansen Natural  
3 Corp. Securities Litig., 527 F. Supp. 2d 1142, 1149 n.2 (C.D. Cal.  
4 2007) ("[T]he Court will not consider new evidence presented for the  
5 first time in a Reply."). Accordingly, questions such as the scope of  
6 Rule 410 were not addressed, as they were not raised in the  
7 defendant's Opposition, and thus not subject to discussion in the  
8 government's reply.

9 **B. The Court Should Grant the Government's Motion**

10 1. Federal Rule of Evidence 410 is Not Applicable Here

11 As explained in the Reconsideration Motion, Rule 410 does not  
12 apply to plea agreements. See Reconsideration Motion, at 1-3.  
13 Defendant responds with the incorrect assertion that "it does not  
14 matter whether Rule 410 applies to the factual basis of a plea  
15 agreement." Opp. at 4. This is plainly incorrect - the applicability  
16 of Rule 410 is central here, because if Rule 410 does not apply to  
17 plea agreements - in contrast to statements made during plea  
18 negotiations - then there is nothing barring the use of the Factual  
19 Basis for impeachment at trial.

20 The Plea Agreement is a document signed by the defendant which  
21 includes an inculpatory statement (i.e., the Factual Basis). The  
22 Federal Rules of Evidence treat statements that an opposing party  
23 either "made" or "adopted or believed to be true" or that were made  
24 by one whom the party "authorized to make a statement on the subject"  
25 as non-hearsay. See Fed. R. Evid. 801(d)(2)(A)-(C). Such statements  
26 are thus presumptively admissible. Defendant obviously made or  
27 adopted the statements in the Factual Basis, which he and his counsel  
28

1 both agreed to and signed. See Plea Agreement, at ¶ 9 ("Defendant and  
2 the USAO agree to the statement of facts provided below..."); id., at  
3 18-19 (defendant's signature and translator's certification). A  
4 defendant signing a plea agreement "adopt[s]" the facts therein. See  
5 United States v. Vera, 893 F.3d 689, 693 (9th Cir. 2018). That is why  
6 the terms of the plea agreement may later be used to evaluate what a  
7 defendant "admitted." See Shepard v. United States, 544 U.S. 13, 25  
8 (2005).

9 Because defendant made or adopted statements in the Factual  
10 Basis, it is incumbent on the defense to explain why that admissible  
11 evidence should be excluded. Whether the plea agreement created an  
12 enforceable contract makes no difference insofar as the government is  
13 seeking to admit evidence, not to enforce a contractual right.  
14 Defendant's Opposition fails to grasp this fundamental proposition;  
15 instead, he claims that because the Plea Agreement is purportedly  
16 unenforceable, he therefore made no statement at all. See Opp. 13  
17 ("Given that the contract is unenforceable, then there is in fact no  
18 'statement' of Puig at all to use for impeachment"). Not so. The fact  
19 that a contract may be deemed unenforceable does not erase the words  
20 written therein or the parties' adoption of those words. The rules of  
21 evidence thus permit the government to introduce the Factual Basis.

22 The Plea Agreement is only relevant to this analysis because it  
23 includes a broad waiver provision which also references Rule 410. See  
24 Plea Agreement, at ¶ 22(c). That waiver is enforceable and should be  
25 enforced, as the government has previously argued. See ECF Nos. 135,  
26 at 4-5; 148, at 4-6. But irrespective of the waiver, if Rule 410 does  
27 not apply to plea agreements, then there is no basis to exclude the  
28



1 statements defendant adopted therein.<sup>2</sup> As such, this question is  
2 relevant.

3 Defendant's response on this point is not persuasive. Defendant  
4 argues that the reference to Rule 410 in the Plea Agreement's waiver  
5 provision must be evidence that Rule 410 applies to plea agreements.  
6 See Opp. at 7. Not so - parties routinely protect against claims that  
7 lack merit.<sup>3</sup> The Plea Agreement's waiver provision is expansive and  
8 prophylactic. See Plea Agreement at ¶ 22(c) (waiving "any claim under  
9 the United States Constitution, any statute, Rule 410 of the Federal  
10 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal  
11 Procedure, or any other federal rule"). By its terms, the waiver  
12 provision of the Plea Agreement reaches far beyond the Plea Agreement  
13 itself, and thus encompasses material that may be protected by Rule  
14 410. For example, Rule 410(a)(3) addresses any "statement made during  
15 a proceeding on [a guilty plea] under Federal Rule of Criminal  
16 Procedure 11," while the waiver provision includes "any statements  
17 made by defendant, under oath, at the guilty plea hearing." Plea  
18 Agreement, ¶ 22(c). At the same time, the waiver provision also  
19 addresses "evidence derived from such statements," id., but such  
20 evidence is plainly not Rule 410 material. In sum, the waiver  
21  
22

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23 <sup>2</sup> Of course, if the Plea Agreement were unenforceable, the  
24 remainder of the waivers stated in the Plea Agreement's waiver  
25 provision, such as waivers of Rule 403, would not be enforceable, and  
26 thus defendant could seek to exclude the Factual Basis under Rule  
27 403. This Court, however, did not rule on the basis of Rule 403.

28 <sup>3</sup> Nor is it relevant whether the government has challenged the  
applicability of Rule 410 to plea agreements in other cases. This is  
not "a concession that the plea agreement was otherwise subject to  
Rule 410." Opp. at 7. Rather, this is an argument that in other  
instances may have been overlooked or waived.

1 provision broadly addresses material both within and outside Rule  
2 410's scope.

3 Defendant also relies on Federal Rule of Criminal Procedure  
4 11(f), but that provision only fortifies the government's argument  
5 that there is a distinction between plea discussions and plea  
6 agreements. Rule 11(f) says that "a plea, a plea discussion, and any  
7 related statement is governed by Federal Rule of Evidence 410." Like  
8 Rule 410, Rule 11(f) makes no reference to a "plea agreement." See  
9 Botosan v. Paul McNally Realty, 216 F.3d 827, 832 (9th Cir. 2000)  
10 ("The incorporation of one statutory provision to the exclusion of  
11 another must be presumed intentional under the statutory canon of  
12 *expressio unius*"). The drafters of Rule 11 knew how to include  
13 references to plea agreements when they meant to. See, e.g., Fed. R.  
14 Crim. P. 11(c)(1) ("An attorney for the government and the  
15 defendant's attorney . . . may discuss and reach a plea agreement.").  
16 Because neither Rule 410 nor Rule 11(f) addresses "plea agreements,"  
17 the plain text controls: "plea discussions" are not "plea  
18 agreements."

19 Defendant also cites to the 1979 Advisory Committee Notes of  
20 Rule 11, which states as follows:

21 If there has been a plea of guilty later withdrawn or a  
22 plea of nolo contendere, subdivision (e)(6)(C) makes  
23 inadmissible statements made "in the course of any  
24 proceedings under this rule" regarding such pleas. This  
25 includes, for example, admissions by the defendant when  
26 he makes his plea in court pursuant to rule 11 and also  
27 admissions made to provide the factual basis pursuant to  
28 subdivision (f).

26 Fed. R. Crim. P. 11, 1979 Adv. Comm. Notes. Again, defendant's  
27 citation actually supports the government's position: the Advisory  
28 Committee note addresses statements made during a guilty plea

1 hearing: "admissions by the defendant when he makes his plea in court  
2 pursuant to rule 11 and also admissions made to provide the factual  
3 basis." Id. (emphasis added). Such statements are explicitly  
4 encompassed by Rule 410(a)(3) as "statements made during a proceeding  
5 on [a guilty plea]" – not under Rule 410(a)(4), which addresses plea  
6 discussions. Defendant never proceeded to a change of plea hearing,  
7 so Rule 410(a)(3) is plainly inapplicable, and thus the Advisory  
8 Committee Notes provide no support for his arguments.

9 Finally, while defendant generally argues that "Rule 410 is  
10 similarly expansive" (Opp. at 6), he does not address the  
11 government's cited precedent from three separate circuit courts  
12 defining when the plea negotiation process ends – with a signed plea  
13 agreement. See United States v. Knight, 867 F.2d 1285, 1288 (11th  
14 Cir. 1989) ("Once a plea contract is formed, the policy behind Rule  
15 11(e)(6)--to allow a defendant to freely negotiate without fear that  
16 statements will be used against him--is no longer applicable.");  
17 United States v. Lloyd, 43 F.3d 1183, 1186 (8th Cir. 1994) ("Once  
18 Lloyd signed the agreement, negotiations terminated and Rule 11(e)(6)  
19 by its terms no longer required exclusion of his subsequent  
20 statements."); and United States v. Davis, 617 F.2d 677, 685 (D.C.  
21 Cir. 1979) (rejecting application of the predecessor to Rule 410 to  
22 post-agreement statements because "[e]xcluding testimony made after  
23 and pursuant to the agreement would not serve the purpose of  
24 encouraging compromise").

25 2. Even If Rule 410 Were Applicable, the Government Has  
26 Shown Detrimental Reliance

27 Defendant also argues that the government's reliance arguments  
28 are "mere speculation" (Opp. at 9-10, n.7) but defendant does not

1 address the applicable standard. The government has articulated what  
2 it would have been done differently, which is all the law requires to  
3 establish detrimental reliance. See United States v. Gamboa-Cardenas,  
4 508 F.3d 491, 504 (9th Cir. 2007) (defendant established detrimental  
5 reliance where he argued that he would have testified at trial but  
6 for the government's assurance).

7 **C. If Reconsideration is Denied, the Court Should Permit the**  
8 **Factual Basis to Be Used for Impeachment**

9 As stated in the Reconsideration Motion, the government submits  
10 that, if defendant testifies at trial and does so inconsistently with  
11 the Factual Basis, then the Court should allow the government to  
12 (1) ask defendant if he executed a written statement during the  
13 course of this case, (2) ask him if he understood that statement,  
14 (3) ask him if his counsel assisted him in reviewing that statement,  
15 and (4) confront him with any portion of the Factual Basis  
16 inconsistent with his testimony. In response, defendant offers a  
17 range of arguments, none of which is persuasive.

18 First, defendant repeats - with no cited case law at all - that  
19 an unenforceable contract cannot contain a statement. As explained  
20 above, this simply confuses contract law with the rules of evidence.  
21 Whether or not the parties can enforce the Plea Agreement, it is a  
22 document signed by defendant (and his counsel), which explicitly  
23 adopts a statement of facts. Documents need not be enforceable in  
24 court in order to contain adopted statements. Indeed, the Rule  
25 801(d) (2) (B) standard is far broader. See Transbay Auto Serv., Inc.  
26 v. Chevron USA Inc., 807 F.3d 1113, 1119-21 (9th Cir. 2015). A party  
27 adopts statements merely by "use of a document supplied by another"  
28 even if, unlike here, the party "is only vaguely aware of the

1 contents of [the] document.” Id. at 1120. Defendant’s claim that he  
2 “simply has not agreed to the factual basis in any respect” is  
3 nonsense.<sup>4</sup>

4 By agreeing that the Factual Basis was accurate, defendant did  
5 not adopt it as metaphysically true solely for the purposes of  
6 contract law. Defendant nearly implies that he signed what he  
7 contends is a false statement, solely for the purposes of pleading  
8 guilty. See Opp. at 5, n.2 (“defendant’s agreement to the statement  
9 therefore reflects no more than what the provisions of the plea  
10 agreement say: that the defendant agreed to it for purposes of the  
11 plea [and] agreed not to contest it”). This is not how Rule 11  
12 operates, and certainly not the Court’s practice.

13 Finally, permitting the use of the Factual Basis for impeachment  
14 would not create a “trial-within-a-trial about the circumstances  
15 surrounding the plea.” Opp. at 16. Though not legally required, the  
16 government has proposed to avoid informing the jury that the Factual  
17 Basis was part of a plea agreement and to reference it only as a  
18 “statement.” See, e.g., ECF No. 148, at 7, n.5. Defendant has not  
19 identified any circumstances which meaningfully distinguish these  
20 facts from the myriad other cases in which defendants make statements  
21 to law enforcement that are used against them at trial. As the  
22 government has noted, the Ninth Circuit’s model jury instructions  
23 specifically govern such situations. See Ninth Circuit Model Jury

---

24  
25 <sup>4</sup> Defendant’s argument is also defeated by Mabry v. Johnson, 467  
26 U.S. 504, 507-08 (1984), as applied in this Court’s 8/10 Order. While  
27 the government maintains that Mabry has been implicitly overruled by  
28 Puckett v. United States, 556 U.S. 129, 138 (2009), even if a plea  
bargain “is a mere executory agreement” without constitutional  
significance until embodied in the judgment of a court, see Mabry,  
467 U.S. at 507, that executory agreement would still contain adopted  
statements subject to contractual remedies for breach.

1 Instruction 3.1. If anything, defendant is in a better position that  
2 the average defendant who has made an inculpatory statement, as the  
3 government is only seeking to use the Factual Basis for impeachment,  
4 if defendant testifies and does so inconsistently with the Factual  
5 Basis. Defendant has no right to take the stand and commit perjury.  
6 He swore to the accuracy of the Factual Basis, and if he testifies  
7 inconsistently with that statement, this inconsistency should be put  
8 before the jury. If defendant wishes to tell the jury that he  
9 knowingly signed a false statement in order to preserve his lucrative  
10 professional baseball career, that is his choice to make.

### 11 **III. CONCLUSION**

12 For the reasons stated herein and in the Reconsideration Motion,  
13 the government respectfully requests that this Court reconsider the  
14 8/10 Order, or alternately, permit the use of the Factual Basis for  
15 cross-examination of defendant as described herein.

16  
17 Dated: September 27, 2023

Respectfully submitted,

18 E. MARTIN ESTRADA  
19 United States Attorney

20 MACK E. JENKINS  
21 Assistant United States Attorney  
Chief, Criminal Division

22 /s/  
23 DAN G. BOYLE  
24 JEFF MITCHELL  
Assistant United States Attorneys

25 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA

PLAINTIFF(S),

v.

YASIEL PUIG VALDES

DEFENDANT(S).

CASE NUMBER:

CR 22-394(A)-DMG

**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that United States of America hereby appeals to  
*Name of Appellant*  
 the United States Court of Appeals for the Ninth Circuit from:

**Criminal Matter**

- ☐ Conviction only [F.R.Cr.P. 32(j)(1)(A)]  
☐ Conviction and Sentence  
☐ Sentence Only (18 U.S.C. 3742)  
☐ Pursuant to F.R.Cr.P. 32(j)(2)  
☐ Interlocutory Appeals  
☐ Sentence imposed:

☐ Bail status:**Civil Matter**

- ☒ Order (specify):  
 Order Denying Motion for Partial Reconsideration;  
 CR No. 161; Filed on 10/5/23  
☐ Judgment (specify):  
☒ Other (specify):  
 Order Denying Breach Motion;  
 CR No. 143; Filed on 8/10/23

Imposed or Filed on 10/5/23; 8/10/23. Entered on the docket in this action on 10/5/23; 8/10/23.

A copy of said judgment or order is attached hereto.

11-1-23  
 Date

s/ Jeff Mitchell  
 Signature  
☐ Appellant/ProSe ☐ Counsel for Appellant ☐ Deputy Clerk

**Note:** The Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, if not electronically filed in a criminal case, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of FRAP 3(d).

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Case 2:22-cr-00394-DMG Document 161 Filed 10/05/23 Page 1 of 4 Page ID #:1573

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CRIMINAL MINUTES—GENERAL

Case No. CR 22-394(A)-DMG Date October 5, 2023

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE Page 1 of 4

Kane Tien <i>Deputy Clerk</i>	Not Reported <i>Court Reporter</i>	Not Present <i>Assistant U.S. Attorney</i>
----------------------------------	---------------------------------------	---

<u>U.S.A. v. Defendant(s):</u>	<u>Present</u>	<u>Cust.</u>	<u>Bond</u>	<u>Attorneys for Defendant(s):</u>	<u>Present</u>	<u>Appt.</u>	<u>Ret.</u>
Yasiel Puig Valdes	Not		✓	Keri Axel	Not		✓

**Proceedings: [IN CHAMBERS] ORDER DENYING MOTION FOR PARTIAL RECONSIDERATION [148]**

The Government moves for “partial reconsideration and clarification” of the Court’s August 10, 2023 Order denying the Government’s motion to find a knowing breach of the plea agreement in this criminal action against Yasiel Puig Valdes. MFR [Doc. # 148]. The Government argues that the Court’s reasoning was erroneous in two regards and requests clarification that the factual basis in Puig’s plea agreement can be used for impeachment. For the reasons discussed below, the motion is **DENIED**.

**I.  
BACKGROUND**

Puig was scheduled to plead guilty at a hearing on November 23, 2022 [*see* Doc. # 22] and signed a plea agreement filed with this Court on August 29, 2022. [Doc. # 6.] He ultimately did not plead guilty, and the Court did not hold a plea hearing. On December 14, 2022, the Government filed a motion for breach of the plea agreement. [Doc. # 33.] The Court granted the motion on January 6, 2023, finding Puig breached the agreement but deferring any ruling on the issue of whether the breach was knowing. [Doc. # 51.]

On June 1, 2023, the Government moved to find the breach of the plea agreement had been “knowing.” [Doc. # 110.] If the breach was knowing, according to the Government, the breach implicated a provision of the plea agreement in which Puig waived any arguments that Fed. R. Evid. 410 barred the admission of the factual basis in the agreement as evidence against him. *Id.* at 5.<sup>1</sup> On August 10, 2023, the Court denied the Government’s motion. [Doc. # 143.] Based on case law that had not been considered at the time the Court granted the Government’s motion for breach of the plea agreement, the Court found that because it had not held a plea hearing, and thus had never formally accepted Puig’s guilty plea, the agreement was unenforceable. Terms regarding the consequences of a “knowing” breach were accordingly not binding. [Doc. # 143 at 2.] The Court therefore denied the Government’s motion and amended its January 6, 2023 Order to reflect that the agreement had not been breached, but was unenforceable. *Id.* at 6.

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<sup>1</sup> Citations to the record are to the CM/ECF pagination.



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**CRIMINAL MINUTES—GENERAL**

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On August 24, 2023, the Government filed the MFR. Briefing on the MFR is complete and, on October 3, 2023, the Court took the matter under submission. [Doc. ## 148, 154, 155, 157.]

## II. DISCUSSION

### A. Reconsideration

Local Rule 7-18 sets forth the permissible grounds for a motion for reconsideration:

A motion for reconsideration of an Order on any motion or application may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court that, in the exercise of reasonable diligence, could not have been known to the party moving for reconsideration at the time the Order was entered, or (b) the emergence of new material facts or a change of law occurring after the Order was entered, or (c) a manifest showing of a failure to consider material facts presented to the Court before the Order was entered. No motion for reconsideration may in any manner repeat any oral or written argument made in support of, or in opposition to, the original motion.

The MFR advances alternative arguments: (1) Fed. R. Evid. 410 does not apply to plea agreements or (2) the Court erred when concluding that Puig's waiver of 410 was not binding. The MFR thus argues alternatively that Rule 410 does not apply and, if it does apply, Puig waived arguments relying on the rule.<sup>2</sup>

In support of the first argument, the Government asserts Fed. R. Evid. 410(a)(4)<sup>3</sup> does not apply to a factual basis in a plea agreement, reasoning that plea "agreements" (including the factual bases therein) are not plea "discussions." MFR at 1. The Court's implicit ruling that Rule 410 otherwise would

---

<sup>2</sup> Of course, the Government may take inconsistent positions in its briefing. But in its briefing on the motion to find a knowing breach, the Government took only the position that Rule 410 would otherwise bar the admission of a factual basis in a plea agreement (albeit never clarifying which subsection of Rule 410 it believed compelled such an outcome). [See Doc. # 110 at 16–17, 23.] Now that the Government's strategy proved unavailing, it seeks reconsideration on the basis that Rule 410 never applied in the first place. A motion for reconsideration is not a vehicle for the Government to take multiple proverbial bites of the apple until it finds a winning argument. And while the Government argues that it was limited in its ability to address Rule 410's applicability because Puig first asserted the agreement was not binding in his opposition brief, the Government could have requested to expand the scope of its reply brief or raised the issue at oral argument. What the Government should not have done was wait until after an adverse ruling to raise new issues in a motion for reconsideration.

<sup>3</sup> That subsection disallows the admission of "a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea." Fed. R. Evid. 410(a)(4). The Court did not specifically find that Rule 410(a)(4), as opposed to another section of Rule 410, applied to the factual basis in its August 10, 2023 Order.

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bar admission of the factual basis rests on well-trodden ground, as explained by, *inter alia*, the Fifth Circuit: “Courts have read Rules 410(a) and 11(f) to include statements made in the defendant’s written plea agreement because such statements constitute evidence of the withdrawn guilty plea itself, *see* Fed. R. Evid. 410(a)(1) & (a)(3), and are “related” to a withdrawn guilty plea, Fed. R. Crim. P. 11(f).” *United States v. Escobedo*, 757 F.3d 229, 232 (5th Cir. 2014) (discussing authorities). The plain text of Rule 11(f) makes clear that Rule 410 covers more than just plea discussions. *See* Fed. R. Crim. P. 11(f) (“The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410.” (Emphasis added)).

The Court declines to further address the Government’s arguments. The Court never ruled and neither party has maintained until now that Rule 410(a)(4) (the basis for the Government’s first argument) applies to factual bases in plea agreements. The Government fails to show that its arguments about Rule 410(a)(4) fit within any of the grounds for reconsideration—or even to meaningfully address L.R. 7-18. *See* MFR at 3 n.2. As the Government itself acknowledges, Rule 410 arguments can be waived. *See* Reply at 7 n3.

The Government’s second argument also merits little discussion, as the Court has already considered the parties’ briefing and oral arguments on this issue and issued a detailed minute order explaining why the Court finds the Government’s position unpersuasive. *See* L.R. 7-18; Doc. ## 141, 143. The Government cites to additional cases that do not constitute a change in the law following the Court’s Order or otherwise meet the standard for appropriate arguments in a motion for reconsideration. *See* MFR at 6–7. The Government also, for the first time, attempts to argue that the plea agreement should be binding under the exception for a party’s detrimental reliance on the agreement set forth in, *e.g.*, *United States v. Savage*, 978 F.2d 1136, 1138 (9th Cir. 1992). This argument, based on longstanding Ninth Circuit authority, should not have first appeared in a motion for reconsideration and will not be considered by the Court. The Court does not further address the Government’s arguments for reconsideration.

**B. Impeachment**

The Government requests that the Court allow it to use the factual basis for impeachment, if Puig takes the stand and testifies inconsistently with the statement. MFR at 8. Specifically, the Government seeks to “(1) ask defendant if he executed a written statement during the course of this case, (2) ask him if he understood that statement, (3) ask him if his counsel assisted him in reviewing that statement, and (4) confront him with any portion of the Factual Basis inconsistent with his testimony.” *Id.* at 8–9.

If Rule 410 applies to a given statement, it cannot be used for impeachment. *See United States v. Mezzanatto*, 998 F.2d 1452, 1454 (9th Cir. 1993) (Rule 410 does not include an exception for use of the evidence as impeachment), *reversed on other grounds*, 513 U.S. 200 (1995) (allowing a plea agreement to include a Rule 410 waiver). The Government points to no binding case law holding that there is an exception from the rule when evidence is used for impeachment, as opposed to some other purpose.

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UNITED STATES DISTRICT COURT  
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Because the Court declines to reconsider its conclusion that Rule 410 applies to the factual basis and because the Government identifies no binding authority allowing evidence implicating Rule 410 to be admitted for impeachment, the Government's motion in this respect is also denied.

**III.  
CONCLUSION**

The MFR is respectfully **DENIED**.

**IT IS SO ORDERED.**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CRIMINAL MINUTES—GENERAL

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Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

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Kane Tien  
*Deputy Clerk*Not Reported  
*Court Reporter*Not Present  
*Assistant U.S. Attorney*

<u>U.S.A. v. Defendant(s):</u>	<u>Present</u>	<u>Cust.</u>	<u>Bond</u>	<u>Attorneys for Defendant(s):</u>	<u>Present</u>	<u>Appt.</u>	<u>Ret.</u>
Yasiel Puig Valdes	Not		✓	Keri Axel	Not		✓

**Proceedings: [IN CHAMBERS] ORDER DENYING MOTION TO FIND KNOWING BREACH OF PLEA AGREEMENT [110] AND AMENDING ORDER GRANTING MOTION TO FIND BREACH OF PLEA AGREEMENT [51]**

On July 7, 2022, Defendant Yasiel Puig Valdes executed a plea agreement (“the Agreement”) agreeing to plead guilty to making false statements (*see* 18 U.S.C. § 1001(a)(2)) during an investigation into the Wayne Nix sports gambling ring, as set forth in the original indictment in this action. *See* Plea Agr. [Doc. # 6.] The Court never accepted this plea. Rather, Puig decided not to plead guilty, and on January 6, 2023, the Court granted the Government’s motion to find Puig had breached the Agreement in order that the Government could be relieved of any obligations it had undertaken in that Agreement. The Court deferred any finding on whether the breach was “knowing.” [Doc. # 51.]

The Government now moves to find that the breach was “knowing,” so that it may rely on the factual basis of the Agreement as trial evidence. [Doc. # 110.] The motion is fully briefed. [Doc. ## 128, 135, 140.] Because the Agreement was never accepted by the Court, the Court finds that its terms were unenforceable and, on that basis, **DENIES** the Government’s motion. The Court also amends its prior order finding that Puig had breached the Agreement and instead finds the Agreement unenforceable for the reasons stated herein, such that the Government was relieved of its obligations under that Agreement. [Doc. # 51.]

**I.  
BACKGROUND****A. The Charges**

The January 20, 2023 first superseding indictment (“FSI”) adds one count of obstruction of justice (18 U.S.C. § 1503(a)) to the original charge of making false statements. [Doc. # 54.] According to the FSI, Puig is a former professional baseball player who placed bets through the Nix gambling business beginning no later than May 2019, owing \$282,900 for sports gambling losses by June 17, 2019. *Id.* ¶ 19. To repay his losses, individuals identified in the information as “Agent 1” and “Individual B” allegedly both instructed Puig to pay amounts to “Individual A,” and Puig accordingly purchased two cashiers’ checks for \$100,000 each, payable to that person, mailing the checks and texting Agent 1 and Individual

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B confirmation. *Id.* ¶ 20–22. Puig then allegedly regained access to Nix’s gambling websites and placed 899 bets on sporting events, including by placing bets through Agent 1. *Id.* ¶ 23–24.

The FSI further alleges that the Department of Homeland Security, Internal Revenue Service, and U.S. Attorney’s Office interviewed Puig on January 27, 2022, as part of their investigation into illegal sports gambling and money laundering. *Id.* ¶¶ 6–7, 25. Puig was admonished against lying yet nevertheless allegedly made the following false statements: that he had never discussed sports betting with Agent 1, that he had placed a bet online “with an unknown person on an unknown website” that resulted in the \$200,000 loss, and that he did not know the person who instructed him to send cashiers’ checks to Individual A and had never communicated with that person via text message. *Id.* ¶ 29. Further, he allegedly obstructed justice by falsely stating that he had never discussed sports gambling with Agent 1 and withholding information about Agent 1’s involvement in sports gambling. *Id.* ¶ 27.

**B. Plea Discussions, Agreement, and Breach**

Defense attorney Keri Axel states that she contacted AUSA Jeff Mitchell on May 27, 2022 and requested to schedule a reverse proffer, which occurred June 6, 2022. 2/10/23 Axel Decl. ¶ 2 [Doc. # 59-1]; Decl. of Anthony Fernandez ¶ 4 [Doc. # 128-5]. After negotiations (the details of which are not relevant here), Puig ultimately signed a revised plea agreement on July 7, 2022. Plea Agr. That Agreement includes the following consequence for a “knowing” breach of the Agreement, “should the USAO choose to pursue any charge that was either dismissed or not filed as a result of this agreement”—

Defendant agrees that: (i) any statements made by defendant, under oath, at the guilty plea hearing (if such a hearing occurred prior to the breach); (ii) *the agreed to factual basis statement in this agreement*; and (iii) any evidence derived from such statements, shall be admissible against defendant in any such action against defendant, and defendant waives and gives up any claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule, that the statements or any evidence derived from the statements should be suppressed or are inadmissible.

Plea Agr. ¶ 22 (emphasis added). The Agreement also includes a paragraph stating that it is effective upon signature (*id.* ¶ 20) and, in the breach of agreement section, refers to breaches “at any time after the effective date.” *Id.* ¶ 21.

On November 23, 2022, Puig appeared for his plea hearing and moved to continue the hearing. [Doc. # 24.] Defense counsel subsequently notified the Government that Puig did not intend to plead guilty, and on November 28, 2022, the Court vacated the plea hearing scheduled for November 29. [See

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Doc. # 26 at 3.<sup>1</sup>] On December 2, 2022, the parties filed a stipulation requesting a trial date. *Id.* As noted above, the Court found Puig in breach of the Agreement but has yet to rule on whether the breach was “knowing.” [Doc. # 51.]

## II. DISCUSSION

Puig argues that because the Court did not hold a plea hearing (and thus has not formally accepted the plea), the plea is unenforceable, so that terms he agreed to regarding the consequences of a “knowing” breach are not binding. *Opp.* at 11.

Puig is correct as a matter of law. The Ninth Circuit has repeatedly held that until the Court accepts and enters a guilty plea, a plea agreement is not binding on the parties and either party may withdraw. *See United States v. Kuchinski*, 469 F.3d 853, 858 (9th Cir. 2006) (Defendant “insists that once the government entered into a plea agreement, it was absolutely bound to the agreement’s terms. . . . He is wrong.”); *United States v. Fagan*, 996 F.2d 1009, 1013 (9th Cir. 1993); *see also United States v. Savage*, 978 F.2d 1136, 1137 (9th Cir. 1992) (“Unless and until a court accepts a guilty plea, a defendant is free to renege on a promise to so plead.” (quoting *United States v. Papaleo*, 853 F.2d 16, 19 (1st Cir. 1988)); *cf. United States v. Washman*, 66 F.3d 210, 211 (9th Cir. 1995) (“Because we find that the district court had not accepted the agreement at the time [Defendant] attempted to withdraw, we hold that the district court erred in refusing to allow him to withdraw.”); Fed. R. Crim P. 11(d)(1) (a defendant may withdraw a guilty plea before the court accepts the plea “for any reason or no reason”).

The Government argues that this line of cases has been overruled by *Puckett v. United States*, 556 U.S. 129, 138 (2009), a case addressing the standard of review for a claim that the prosecutor breached the plea agreement, a claim which the defendant failed to contemporaneously raise. *See id.* at 133. *Puckett* does not concern the enforceability of a plea agreement where the plea was never accepted by the court. Nor does it implicitly overrule the cases cited above. Rather, the most relevant part of *Puckett*’s holding is that the breach of a plea agreement *after the court accepts the plea* does not retroactively give rise to a claim that the opposing party’s agreement to the plea was coerced or induced by fraud. *Id.* at 137.<sup>2</sup>

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<sup>1</sup> Citations to the record are to the CM/ECF pagination.

<sup>2</sup> *Fagan*, cited *supra*, relied on *Mabry v. Johnson*, 467 U.S. 504, 507 (1984), when it stated that “[a] plea bargain standing alone is without constitutional significance; in itself it is a mere executory agreement which, until embodied in the judgment of a court, does not deprive an accused of liberty or any other constitutionally protected interest.” (Emphasis added.) Contrary to the Government’s arguments, nothing in the Supreme Court’s later opinion in *Puckett* calls this language from *Mabry* into question. *See Reply* at 9. Although the Government cites to a footnote in *Puckett* disavowing “any aspect of the *Mabry*



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The Government also argues that *Savage*'s language, specifically its reliance on certain Fifth Circuit authority that "neither the defendant nor the government is bound by a plea agreement until it is approved by the court," is no longer an accurate statement of the law. *See* Reply at 9 n.2; *see also Savage*, 978 F.2d at 1138 (quoting *United States v. Ocanas*, 628 F.2d 353, 358 (5th Cir. 1980)). According to the Government, *United States v. Hyde*, 520 U.S. 670 (1997), overrules this reasoning. The Court disagrees. Although *Hyde* required a defendant to show a "fair and just reason" to withdraw a plea, it was in the context of a guilty plea *that had been accepted*. The district court had deferred decision on whether to accept the plea agreement after taking the guilty plea. *Id.* at 671; *see also* Fed. R. Crim P. 11(c)(3)(A) (allowing a court to accept a plea but defer a decision on whether to accept a binding plea agreement for certain types of pleas until after the court reviewed the presentence report). The opinion distinguishes between the acceptance of a guilty plea and the acceptance of a plea agreement—a distinction that is beside the point here.

Post-*Hyde*, the Ninth Circuit has affirmed the rule that parties are not bound by a plea agreement until the court accepts the plea. *See United States v. Alvarez-Tautimez*, 160 F.3d 573, 576 (9th Cir. 1998) (holding the defendant "had the absolute right to withdraw his plea before it was accepted by the district court" and that *Washman*'s holding on this point "has not been undercut by" *Hyde*); *United States v. Fernandez*, 65 F. App'x 144, 146 (9th Cir. 2003). In *Fernandez*, the Court reasoned as follows:

The District Court properly considered whether an enforceable plea agreement existed and whether Fernandez detrimentally relied on a governmental plea offer. *United States v. Savage*, 978 F.2d 1136, 1138 (9th Cir. 1992). Fernandez's reliance on *United States v. Hyde*, 520 U.S. 670, 670–73[](1997), is misplaced. *Hyde* dealt with when a plea of guilty could be withdrawn from the Court, it did not change the rule that a plea agreement could be withdrawn by either party before being submitted to and accepted by the Court. *Hyde*, 520 U.S. at 670–73. The District Court did not clearly err in concluding that no enforceable plea agreement existed because a signed agreement had not been submitted to and accepted by the Court. . . .

65 F. App'x at 146. As such, the law in the Ninth Circuit is clear: until the Court accepts a plea, the plea agreement does not bind the parties, and Puig is not bound by the terms of the Agreement here, including his Rule 410 waiver and acknowledgment that the factual basis of the plea could be introduced as evidence if he did not plead guilty.

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dictum that contradicts our holding today" (556 U.S. at 138 n.1), this footnote does not concern the "executory agreement" discussion in *Puckett* cited above. *See Mabry*, 467 U.S. at 509. *Puckett* was concerned primarily with the suggestion that the prosecutor's breach of a promise in a plea agreement renders the plea unknowing or involuntary.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CRIMINAL MINUTES—GENERAL

Case No. CR 22-394(A)-DMG

Date August 10, 2023

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

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The Government alternatively argues that the Court is bound by the law of the case to its previous ruling that Puig breached the Plea Agreement. Reply at 5. In the briefing on the Government's motion to find a breach of the Agreement, neither side alerted the Court to the case law discussed *supra*. Rather, the Government argued that it should be relieved from its obligations under the Agreement because Puig failed to plead guilty [Doc. # 33], and Puig responded that based on contract law principles, the Government had suffered no injury and could not claim breach of the Agreement. [Doc. # 45.] Puig also argued that the Government's requested relief was unspecified, overbroad, and not ripe. *Id.* The Court found that Puig breached the Agreement by failing to plead guilty, so that the Government was relieved of its obligation not to prosecute Puig for obstruction of justice. [Doc. # 51.] Implicit in this ruling was a finding that the parties were bound by their promises in the Agreement—a finding that was erroneous under the clear and binding authority cited above. The law of the case does not apply where a decision is clearly erroneous and its enforcement would work a manifest injustice. *Grand Canyon Trust v. Provencio*, 26 F.4th 815, 821 (9th Cir. 2022). Moreover, the Court is always free to correct its own errors of law. Having now been apprised of the applicable case law, the Court corrects its prior order insofar as it relieved the Government of its obligations on the basis of Puig's purported breach—the Government is still relieved of its obligations under the Agreement, but on the ground that the Agreement is unenforceable given that the Court had not yet accepted Puig's plea.

Finally, the Government argues that Puig's plea agreement includes language that Puig specifically agreed to be bound by the Agreement upon signing. Reply at 10. But neither the Government nor the Court has located any Ninth Circuit authority holding that Puig is bound by his Rule 410 waiver even if his plea is not accepted by the Court. The Government's argument is contrary to the rule in this Circuit (as set forth above) that plea agreements are "implicitly conditioned on court approval" (*see United States v. Alvarado-Arriola*, 742 F.2d 1143, 1145 (9th Cir. 1984)) and are not binding on the parties until such approval. *See Savage*, 978 F.2d at 1138. *Cf. United States v. Floyd*, 1 F.3d 867, 870–71 (9th Cir. 1993) (Where parties may have intended to modify a plea agreement after acceptance, but no Rule 11 hearing was held regarding the modification, the defendant was "deprived of the safeguards Rule 11 was enacted to impose" with respect to the modification); *Washman*, 66 F.3d at 212 & n.5 (explaining that a plea agreement is not binding until it is accepted by the Court and that "[i]ncluded in the promises [the defendant] was free to reject was his waiver of the right to appeal.").

Moreover, even if the inclusion of language purporting to render the Agreement effective upon signature could transform the executory nature of the Agreement, making some portions of the Agreement immediately enforceable, that language would need to be knowing, voluntary, clear and unambiguous. *See United States v. Lo*, 839 F.3d 777, 783 (9th Cir. 2016). Paragraph 22 of the Agreement, which includes the Rule 410 waiver, refers to the Court's finding of a "knowing breach." The Agreement does not specifically state that Defendant gives up his right to argue against admission of the factual basis even if the Court does not accept the plea and notwithstanding the general rule that there are no binding obligations that can be breached until the Court accepts the plea.



Case 2:22-cr-00394-DMG Document 165 Filed 11/01/23 Page 11 of 11 Page ID #:1638

Case 2:22-cr-00394-DMG Document 143 Filed 08/10/23 Page 6 of 6 Page ID #:1433

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**CRIMINAL MINUTES—GENERAL**

Case No. CR 22-394(A)-DMG

Date August 10, 2023

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

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In light of the authority cited above, the Court is not convinced that an agreement to be bound at the time of the signing of the agreement has any more force than the remainder of the agreement, until the plea has been accepted. Further, the Court is not inclined to enforce language in the Agreement that effectively subverts established binding case law.

**III.  
CONCLUSION**

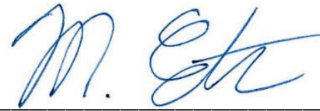
The motion to admit the factual basis is **DENIED**. [Doc. # 110.] The order finding a breach of the plea agreement is hereby **AMENDED** to reflect that the Agreement was not breached, but was unenforceable for the reasons stated herein, such that the Government was relieved of its obligations under that Agreement. [Doc # 51.]

**IT IS SO ORDERED.**

CERTIFICATION OF UNITED STATES ATTORNEY

I hereby certify that this appeal is not taken for purpose of delay and that the evidence excluded is substantial proof of a fact material in the proceeding.

DATED: November 3, 2023

A handwritten signature in blue ink, appearing to read "M. Estrada", is written over a horizontal line.

E. MARTIN ESTRADA  
United States Attorney

AMENDED CERTIFICATION OF UNITED STATES ATTORNEY

I hereby certify that the appeal filed on November 1, 2023, at Docket Number 165, is not taken for purpose of delay and that the evidence excluded is substantial proof of a fact material in the proceeding.

DATED: November 7, 2023

A handwritten signature in blue ink, appearing to read "M. Estrada", is written over a horizontal line.

E. MARTIN ESTRADA  
United States Attorney

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APPEAL,PROTORD,RELATED-G

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA (Western Division - Los Angeles)  
CRIMINAL DOCKET FOR CASE #: 2:22-cr-00394-DMG-1**

Case title: USA v. Puig Valdes

Date Filed: 08/29/2022

Other court case number: 2:22-cr-00080 DMG

Assigned to: Judge Dolly M. Gee

Appeals court case number: 23-3214 9th  
CCA**Defendant (1)****Yasiel Puig Valdes**  
REG 31827-510

represented by **Keri Curtis Axel**  
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1/10/24, 2:42 PM

CM/ECF - California Central District

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*ATTORNEY TO BE NOTICED**Designation: Retained***Pending Counts**18:1001(a)(2) MAKING FALSE  
STATEMENTS

(1)

18:1503(a) OBSTRUCTION OF JUSTICE

(1s)

18:1001(a)(2) MAKING FALSE  
STATEMENTS

(2s)

**Disposition****Highest Offense Level (Opening)**

Felony

**Terminated Counts**

None

**Disposition****Highest Offense Level (Terminated)**

None

**Complaints**

None

**Disposition****Plaintiff**

USA

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1/10/24, 2:42 PM

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ATTORNEY TO BE NOTICED

Designation: Assistant US Attorney

Date Filed	#	Docket Text
08/29/2022	<a href="#">1</a>	INFORMATION filed as to Yasiel Puig Valdes (1) count(s) 1. Offense occurred in Los Angeles. (cio) (Entered: 09/02/2022)
08/29/2022	<a href="#">2</a>	CASE SUMMARY filed by AUSA Jeff Mitchell as to Defendant Yasiel Puig Valdes; defendants Year of Birth: 1990 (cio) (Entered: 09/02/2022)
08/29/2022	<a href="#">6</a>	PLEA AGREEMENT filed by Plaintiff USA as to Defendant Yasiel Puig Valdes (cio) (Entered: 09/02/2022)
08/29/2022	<a href="#">7</a>	NOTICE of Related Case(s) filed by Plaintiff USA as to Defendant Yasiel Puig Valdes Related Case(s): CR 22-80-DMG, (cio) (Entered: 09/02/2022)
08/29/2022	<a href="#">8</a>	GOVERNMENT'S EX PARTE APPLICATION FOR ORDER SEALING INFORMATION AND RELATED DOCUMENTS; DECLARATION OF JEFF MITCHELL (cio) (Entered: 09/02/2022)
09/02/2022	<a href="#">9</a>	ORDER by Judge Josephine L. Staton: granting <a href="#">8</a> EX PARTE APPLICATION to Seal Case as to Yasiel Puig Valdes (1) (cio) (Entered: 09/02/2022)
09/07/2022	<a href="#">10</a>	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 21-01 Related Case filed. Related Case No: 2:22-cr-00080 DMG. Case, as to Defendant Yasiel Puig Valdes, transferred from Judge Josephine L. Staton to Judge Dolly M. Gee for all further proceedings. The case number will now reflect the initials of the transferee Judge 2:22-cr-00394 DMG. Signed by Judge Dolly M. Gee (rn) (Entered: 09/07/2022)
11/10/2022	<a href="#">13</a>	EX PARTE APPLICATION to Unseal Case Filed by Plaintiff USA as to Defendant Yasiel Puig Valdes. (ja) (Entered: 11/14/2022)
11/14/2022	<a href="#">14</a>	ORDER by Judge Dolly M. Gee granting <a href="#">13</a> EX PARTE APPLICATION to Unseal Case as to Yasiel Puig Valdes (1) (ja) (Entered: 11/14/2022)
11/15/2022	<a href="#">16</a>	NOTICE OF REQUEST FOR DETENTION filed by Plaintiff USA as to Defendant Yasiel Puig Valdes (cio) (Entered: 11/17/2022)
11/15/2022	<a href="#">17</a>	MINUTES OF SUMMONS ON INFORMATION HEARING held before Magistrate Judge Patricia Donahue as to Defendant Yasiel Puig Valdes. Defendant states true name as charged. Attorney: Keri Curtis Axel for Yasiel Puig Valdes, Retained, present. Special Appearance made by attorney Jose Nuno. Court orders bail set as: Yasiel Puig Valdes (1) Person Recognizance, (Signature Only). PIA held; see separate PIA minutes. Waiver of Indictment filed. (SPANISH) Interpreter required. Court Smart: CS 11/15/2022. (cio) (Entered: 11/17/2022)
11/15/2022	<a href="#">18</a>	WAIVER OF INDICTMENT by Defendant Yasiel Puig Valdes before Magistrate Judge Patricia Donahue (cio) (Entered: 11/17/2022)
11/15/2022	<a href="#">19</a>	ADVISEMENT OF STATUTORY & CONSTITUTIONAL RIGHTS filed by Defendant Yasiel Puig Valdes. (cio) (Entered: 11/17/2022)
11/15/2022	<a href="#">20</a>	WAIVER of Preliminary Examination or Hearing by Defendant Yasiel Puig Valdes (cio) (Entered: 11/17/2022)
11/15/2022	<a href="#">22</a>	MINUTES OF POST-INDICTMENT ARRAIGNMENT: held before Magistrate Judge Patricia Donahue as to Defendant Yasiel Puig Valdes (1) Count 1. Defendant arraigned,

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		states true name is the name on the charging document. Attorney: Keri Curtis Axel and Jose Nuno, Retained present. Case assigned to Judge Dolly M. Gee.( The guilty plea is set for 11/23/2022 02:30 PM before Judge Dolly M. Gee.), (Spanish) INTERPRETER Required as to Defendant Yasiel Puig Valdes. If there is a plea agreement in the case, a courtesy copy of the plea agreement shall be delivered to the Clerk's Office Window on the 4th floor @ 350 West 1st Street, Attention: Kane G. Tien, Clerk to Judge Gee, within two days of the PIA hearing. Court Smart: CS 11/15/2022. (tba) (Entered: 11/19/2022)
11/16/2022	<a href="#">15</a>	NOTICE OF APPEARANCE OR REASSIGNMENT of AUSA Daniel G. Boyle on behalf of Plaintiff USA. Filed by Plaintiff USA. (Attorney Daniel G. Boyle added to party USA(pty:pla))(Boyle, Daniel) (Entered: 11/16/2022)
11/16/2022	<a href="#">21</a>	BOND AND CONDITIONS OF RELEASE filed as to Defendant Yasiel Puig Valdes conditions of release: Personal Recognizance (Signature Only) approved by Magistrate Judge Patricia Donahue. (cio) (Entered: 11/17/2022)
11/18/2022	<a href="#">23</a>	NOTICE OF CLERICAL ERROR, as to Defendant Yasiel Puig Valdes: Due to clerical error the document was filed on the wrong case Re: NOTICE OF REQUEST FOR DETENTION filed by Plaintiff USA as to Defendant Yasiel Puig Valdes <a href="#">16</a> (ja) (Entered: 11/21/2022)
11/23/2022	<a href="#">24</a>	MINUTES OF Status Conference Re Guilty Plea Hearing held before Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Defendant orally move to continue the hearing. The Court hears argument. The matter is continued to 11/29/2022 03:30 PM before Judge Dolly M. Gee. Court Reporter: Judy Moore. (gk) (Entered: 11/23/2022)
11/28/2022	25	IN CHAMBERS) ORDER by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Pursuant to the parties' request, the Court hereby VACATES the guilty plea hearing on November 29, 2022. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (kti) TEXT ONLY ENTRY (Entered: 11/28/2022)
12/02/2022	<a href="#">26</a>	STIPULATION for Order Requesting Trial Date filed by Plaintiff USA as to Defendant Yasiel Puig Valdes (Attachments: # <a href="#">1</a> Proposed Order)(Mitchell, Jeff) (Entered: 12/02/2022)
12/02/2022	<a href="#">27</a>	ORDER SETTING TRIAL DATE by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Jury Trial set for 1/10/2023 08:30 AM before Judge Dolly M. Gee. Pretrial Conference set for 12/13/2022 02:00 PM before Judge Dolly M. Gee. (gk) (Entered: 12/02/2022)
12/02/2022	<a href="#">28</a>	CRIMINAL MOTION AND TRIAL ORDER by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Jury Trial set for 1/10/2023 08:30 AM before Judge Dolly M. Gee. Pretrial Conference set for 12/13/2022 02:00 PM before Judge Dolly M. Gee. See document for further details. (gk) (Entered: 12/02/2022)
12/02/2022	<a href="#">29</a>	NOTICE OF CLERICAL ERROR, as to Defendant Yasiel Puig Valdes Re: Criminal Motion and Trial Order by Judge Dolly M. Gee filed 12/2/2022 <a href="#">28</a> . Due to clerical error, attachments are missing from the PDF. See corrected document attached hereto. (Attachments: # <a href="#">1</a> Corrected Order) (gk) (Entered: 12/02/2022)
12/05/2022	<a href="#">30</a>	WAIVER of Defendants Presence filed by Defendant Yasiel Puig Valdes (Axel, Keri) (Entered: 12/05/2022)
12/12/2022	<a href="#">31</a>	STIPULATION to Continue Trial Date from 1-10-23 to 2-14-23 filed by Plaintiff USA as to Defendant Yasiel Puig Valdes (Attachments: # <a href="#">1</a> Proposed Order)(Mitchell, Jeff) (Entered: 12/12/2022)
12/12/2022	<a href="#">32</a>	ORDER CONTINUING TRIAL DATE AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge

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		Dolly M. Gee as to Defendant Yasiel Puig Valdes. Jury Trial is continued to 2/14/2023 08:30 AM before Judge Dolly M. Gee. Pretrial Conference is continued to 2/1/2023 02:30 PM before Judge Dolly M. Gee. (gk) (Entered: 12/12/2022)
12/14/2022	<a href="#">33</a>	NOTICE OF MOTION AND MOTION for Order for GOVERNMENTS MOTION FOR BREACH OF PLEA AGREEMENT Filed by Plaintiff USA as to Defendant Yasiel Puig Valdes. (Mitchell, Jeff) (Entered: 12/14/2022)
12/15/2022	<a href="#">34</a>	Notice of Appearance or Withdrawal of Counsel: for attorney Jose R Nuno counsel for Defendant Yasiel Puig Valdes. Filed by Defendant Yasiel Puig Valdes. (Attorney Jose R Nuno added to party Yasiel Puig Valdes(pty:dft))(Nuno, Jose) (Entered: 12/15/2022)
12/15/2022	<a href="#">35</a>	EX PARTE APPLICATION for Protective Order Filed by Plaintiff USA as to Defendant Yasiel Puig Valdes. (Attachments: # <a href="#">1</a> Proposed Order) (Boyle, Daniel) (Entered: 12/15/2022)
12/16/2022	<a href="#">36</a>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Document RE: NOTICE OF MOTION AND MOTION for Order for GOVERNMENTS MOTION FOR BREACH OF PLEA AGREEMENT <a href="#">33</a> . The following error(s) was/were found: Local Rule 7-3 compliance statement missing. Hearing information is missing, incorrect, or untimely. Proposed document was not submitted or was not submitted as a separate attachment. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (gk) (Entered: 12/16/2022)
12/16/2022	37	(IN CHAMBERS) ORDER by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Defendant shall file any opposition to the Government's ex parte application <a href="#">35</a> by December 19, 2022. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (kti) TEXT ONLY ENTRY (Entered: 12/16/2022)
12/16/2022	<a href="#">38</a>	NOTICE OF LODGING filed by Plaintiff USA as to Defendant Yasiel Puig Valdes (Attachments: # <a href="#">1</a> Proposed Order)(Mitchell, Jeff) (Entered: 12/16/2022)
12/19/2022	39	(IN CHAMBERS) ORDER by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Defendant shall file any opposition to the Government's Motion for Breach of Plea Agreement <a href="#">33</a> by December 28, 2022. The Government shall file any reply in support of the motion by January 4, 2023. Thereafter, the matter will stand submitted. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (kti) TEXT ONLY ENTRY (Entered: 12/19/2022)
12/19/2022	<a href="#">40</a>	OBJECTION to EX PARTE APPLICATION for Protective Order <a href="#">35</a> , filed by Defendant Yasiel Puig Valdes (Axel, Keri) (Entered: 12/19/2022)
12/19/2022	<a href="#">41</a>	DECLARATION of Keri Curtis Axel filed by Defendant Yasiel Puig Valdes (Attachments: # <a href="#">1</a> Exhibit A)(Axel, Keri) (Entered: 12/19/2022)
12/19/2022	<a href="#">42</a>	OPPOSITION to EX PARTE APPLICATION for Protective Order <a href="#">35</a> filed by Defendant Yasiel Puig Valdes. (Attachments: # <a href="#">1</a> Proposed Order)(Axel, Keri) (Entered: 12/19/2022)
12/20/2022	<a href="#">43</a>	REPLY in Support of EX PARTE APPLICATION for Protective Order <a href="#">35</a> (Boyle, Daniel) (Entered: 12/20/2022)
12/21/2022	<a href="#">44</a>	PROTECTIVE ORDER REGARDING DISCOVERY CONTAINING CONFIDENTIAL INFORMATION <a href="#">35</a> by Judge Dolly M. Gee as to Yasiel Puig Valdes. (lom) (Entered: 12/21/2022)
12/28/2022	<a href="#">45</a>	OPPOSITION to NOTICE OF MOTION AND MOTION for Order for GOVERNMENTS MOTION FOR BREACH OF PLEA AGREEMENT <a href="#">33</a> filed by



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		Defendant Yasiel Puig Valdes. (Axel, Keri) (Entered: 12/28/2022)
01/04/2023	<a href="#">46</a>	REPLY to Opposition to Motion (CR) <a href="#">45</a> , filed by Plaintiff USA as to Defendant Yasiel Puig Valdes (Mitchell, Jeff) (Entered: 01/04/2023)
01/04/2023	<a href="#">47</a>	NOTICE of Manual Filing of Under Seal Documents filed by Plaintiff USA as to Defendant Yasiel Puig Valdes (Mitchell, Jeff) (Entered: 01/04/2023)
01/05/2023	<a href="#">48</a>	<b>SEALED</b> - GOVERNMENT'S EX PARTE APPLICATION FOR ORDER SEALING DOCUMENT; DECLARATION OF JEFF MITCHELL (bm) (Entered: 01/05/2023)
01/05/2023	<a href="#">49</a>	ORDER SEALING DOCUMENT <a href="#">47</a> by Judge Dolly M. Gee granting <a href="#">48</a> EX PARTE APPLICATION as to Yasiel Puig Valdes (1) (bm) (Entered: 01/05/2023)
01/05/2023	<a href="#">50</a>	<b>SEALED</b> - NOTICE OF LODGING OF DECLARATION AND EXHIBITS IN SUPPORT OF GOVERNMENT'S MOTION FOR BREACH OF PLEA AGREEMENT (bm) (Entered: 01/05/2023)
01/06/2023	<a href="#">51</a>	MINUTES (IN CHAMBERS) ORDER GRANTING MOTION TO FIND BREACH OF PLEA AGREEMENT by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. The Court GRANTS the Government's Motion <a href="#">33</a> . The Court finds that the Government substantially complied with the Court's Order. The Court finds Defendant in breach of the plea agreement. The Government therefore is relieved of any obligations it undertook in the plea agreement. (gk) (Entered: 01/06/2023)
01/17/2023	<a href="#">52</a>	STIPULATION to Continue Trial Date from February 14, 2023 to April 25, 2023 filed by Plaintiff USA as to Defendant Yasiel Puig Valdes (Attachments: # <a href="#">1</a> Proposed Order) (Mitchell, Jeff) (Entered: 01/17/2023)
01/19/2023	<a href="#">53</a>	ORDER CONTINUING TRIAL DATE AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Jury Trial is continued to 4/25/2023 08:30 AM before Judge Dolly M. Gee. Pretrial Conference is continued to 4/12/2023 02:00 PM before Judge Dolly M. Gee. (gk) (Entered: 01/20/2023)
01/20/2023	<a href="#">54</a>	FIRST SUPERSEDING INDICTMENT Filed as to Yasiel Puig Valdes (1) count(s) 1s, 2s. (cio) (Entered: 01/20/2023)
01/20/2023	<a href="#">55</a>	CASE SUMMARY filed by AUSA Jeff Mitchell as to Defendant Yasiel Puig Valdes; defendants Year of Birth: 1990 (cio) (Entered: 01/20/2023)
01/20/2023	<a href="#">56</a>	TRANSCRIPT filed as to Defendant Yasiel Puig Valdes for proceedings held on 11/23/22 2:33 p.m.. Court Reporter: JUDY K MOORE, CRR, RMR, Email: JUDYMOORE9@GMAIL.COM. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 2/10/2023. Redacted Transcript Deadline set for 2/21/2023. Release of Transcript Restriction set for 4/20/2023.(ha) (Entered: 01/23/2023)
01/20/2023	<a href="#">57</a>	NOTICE OF FILING TRANSCRIPT filed as to Defendant Yasiel Puig Valdes for proceedings 11/20/23 @ 2:33 p.m. re Transcript <a href="#">56</a> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (ha) TEXT ONLY ENTRY (Entered: 01/23/2023)
01/24/2023	<a href="#">58</a>	TRANSCRIPT ORDER as to Defendant Yasiel Puig Valdes for Court Reporter. Order for: Criminal Non Appeal. Court will contact Alexis Galindo at agalindo@waymakerlaw.com with further instructions regarding this order. Transcript preparation will not begin until payment has been satisfied with the court reporter.(Axel, Keri) (Entered: 01/24/2023)

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02/10/2023	<a href="#">59</a>	NOTICE OF MOTION AND MOTION to Compel Discovery <i>YASIEL PUIG'S NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY REGARDING SELECTIVE PROSECUTION</i> Filed by Defendant Yasiel Puig Valdes. Motion set for hearing on 3/15/2023 at 08:30 AM before Judge Dolly M. Gee. (Attachments: # <a href="#">1</a> Declaration of Keri Axel ISO Mot to Compel Discovery re Selective Prosecution) (Axel, Keri) (Entered: 02/10/2023)
02/10/2023	<a href="#">60</a>	NOTICE of Manual Filing of Under Seal Pleadings; Ex Parte Application to Seal; Proposed Order to Seal filed by Defendant Yasiel Puig Valdes (Axel, Keri) (Entered: 02/10/2023)
02/10/2023	<a href="#">71</a>	MINUTES OF POST-INDICTMENT ARRAIGNMENT: held before Magistrate Judge Pedro V. Castillo as to Defendant Yasiel Puig Valdes (1) Count 1,1s,2s. Defendant arraigned, states true name is the name on the charging document. Defendant entered not guilty plea to all counts as charged. Attorney: Keri Curtis Axel, Retained present. Case assigned to Judge Dolly M. Gee.( Jury Trial set for 4/25/2023 08:30 AM before Judge Dolly M. Gee., Pretrial Conference set for 4/12/2023 02:00 PM before Judge Dolly M. Gee.), (Spanish) INTERPRETER Required as to Defendant Yasiel Puig Valdes Court Smart: CS 02/10/2023. (tba) (Entered: 02/15/2023)
02/13/2023	<a href="#">61</a>	DECLARATION of Keri C. Axel filed by Defendant Yasiel Puig Valdes RE: NOTICE OF MOTION AND MOTION to Compel Discovery <i>YASIEL PUIG'S NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY REGARDING SELECTIVE PROSECUTION</i> <a href="#">59</a> AMENDED DECLARATION OF KERI CURTIS AXEL IN SUPPORT OF DEFENDANT YASIEL PUIG VALDES MOTION TO COMPEL DISCOVERY RE SELECTIVE PROSECUTION WITH EXHIBITS (Axel, Keri) (Entered: 02/13/2023)
02/14/2023	<a href="#">62</a>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Document RE: NOTICE OF MOTION AND MOTION to Compel Discovery <i>YASIEL PUIG'S NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY REGARDING SELECTIVE PROSECUTION</i> <a href="#">59</a> . The following error(s) was/were found: Proposed document was not submitted or was not submitted as a separate attachment. Hearing information is missing, incorrect, or untimely. The filer set this matter for hearing on 3/15/2023 at 8:30 AM. Judge Gee hears criminal motions on Wednesdays at 2:30 PM. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (gk) (Entered: 02/14/2023)
02/14/2023	<a href="#">63</a>	<b>SEALED</b> - DEFENDANT YASIEL PUIG VALDES' EX-PARTE APPLICATION FOR ORDER SEALING EXCERPTS OF PUIG'S MOTION TO COMPEL DISCOVERY RE SELECTIVE PROSECUTION AND DECLARATION OF JOSE R. NUNO IN SUPPORT OF MOTION TO COMPEL (bm) (Entered: 02/14/2023)
02/14/2023	<a href="#">64</a>	<b>SEALED</b> - DECLARATION OF JOSE R. NUNO IN SUPPORT OF DEFENDANT YASIEL PUIG VALDES' APPLICATION TO SEAL (bm) (Entered: 02/14/2023)
02/14/2023	<a href="#">65</a>	ORDER GRANTING DEFENDANT YASIEL PUIG VALDES' EX PARTE APPLICATION FOR ORDER SEALING EXCERPTS OF PUIG'S MOTION TO COMPEL DISCOVERY RE SELECTIVE PROSECUTION AND DECLARATION OF JOSE R. NUNO IN SUPPORT OF MOTION TO COMPEL <a href="#">60</a> by Judge Dolly M. Gee granting <a href="#">63</a> EX PARTE APPLICATION as to Yasiel Puig Valdes (1) (bm) (Entered: 02/14/2023)
02/14/2023	<a href="#">66</a>	<b>SEALED</b> - YASIEL PUIG'S NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY REGARDING SELECTIVE PROSECUTION (bm) (Entered: 02/14/2023)

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02/14/2023	<a href="#">67</a>	<b>SEALED</b> - DECLARATION OF JOSE R. NUNO IN SUPPORT OF DEFENDANT YASIEL PUIG VALDES' MOTION TO COMPEL DISCOVERY RE SELECTIVE PROSECUTION (bm) (Entered: 02/14/2023)
02/14/2023	<a href="#">68</a>	<b>SEALED DOCUMENT</b> - UNDER SEAL (bm) (Entered: 02/14/2023)
02/14/2023	<a href="#">69</a>	WAIVER of Defendants Presence filed by Defendant Yasiel Puig Valdes (Axel, Keri) (Entered: 02/14/2023)
02/14/2023	<a href="#">70</a>	PROOF OF SERVICE of 1. YASIEL PUIG'S NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY REGARDING SELECTIVE PROSECUTION; 2. DECLARATION OF JOSE R. NUNO IN SUPPORT OF DEFENDANT YASIEL PUIG VALDES' MOTION TO COMPEL DISCOVERY RE SELECTIVE PROSECUTION, served on 2/10/2023, by Defendant Yasiel Puig Valdes re MOTION <a href="#">66</a> , Declaration <a href="#">67</a> . (bm) (Entered: 02/14/2023)
02/22/2023	72	(IN CHAMBERS) ORDER by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. The Court sua sponte continues Defendant's motion to compel discovery regarding selective prosecution <a href="#">59</a> on March 15, 2023 from 8:30 a.m. to 2:30 p.m. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (kti) TEXT ONLY ENTRY (Entered: 02/22/2023)
02/22/2023	<a href="#">73</a>	OPPOSITION to NOTICE OF MOTION AND MOTION to Compel Discovery <i>YASIEL PUIG'S NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY REGARDING SELECTIVE PROSECUTION</i> <a href="#">59</a> , NOTICE OF MOTION AND MOTION for Order for <a href="#">66</a> filed by Plaintiff USA as to Defendant YASIEL PUIG VALDES. (Attachments: # <a href="#">1</a> Declaration of AUSA Jeff Mitchell, # <a href="#">2</a> Exhibit A, # <a href="#">3</a> Exhibit B, # <a href="#">4</a> Exhibit C, # <a href="#">5</a> Exhibit D, # <a href="#">6</a> Exhibit E, # <a href="#">7</a> Exhibit F, # <a href="#">8</a> Exhibit G, # <a href="#">9</a> Exhibit H, # <a href="#">10</a> Exhibit I, # <a href="#">11</a> Exhibit J, # <a href="#">12</a> Exhibit K)(Boyle, Daniel) (Entered: 02/22/2023)
02/22/2023	<a href="#">74</a>	NOTICE of Manual Filing of Application to Seal Exhibits filed by Plaintiff USA as to Defendant Yasiel Puig Valdes (Boyle, Daniel) (Entered: 02/22/2023)
02/22/2023	<a href="#">75</a>	<b>SEALED</b> - GOVERNMENT'S EX PARTE APPLICATION FOR ORDER SEALING DOCUMENTS; DECLARATION OF JEFF MITCHELL (bm) (Entered: 02/22/2023)
02/22/2023	<a href="#">76</a>	<b>SEALED</b> - ORDER SEALING DOCUMENT <a href="#">74</a> (bm) (Entered: 02/22/2023)
02/22/2023	<a href="#">77</a>	<b>SEALED</b> - NOTICE OF LODGING OF EXHIBITS IN SUPPORT OF GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL DISCOVERY (bm) (Entered: 02/22/2023)
03/01/2023	<a href="#">78</a>	NOTICE of Manual Filing of Under Seal Pleadings; Ex Parte Application to Seal; Declaration ISO Application to File Under Seal; Proposed Order to Seal filed by Defendant Yasiel Puig Valdes (Axel, Keri) (Entered: 03/01/2023)
03/01/2023	<a href="#">79</a>	NOTICE of Manual Filing of Application for In Camera Review; Declaration ISO Application for In Camera Review; Proposed Order Granting In Camera Review filed by Defendant Yasiel Puig Valdes (Axel, Keri) (Entered: 03/01/2023)
03/01/2023	<a href="#">80</a>	DECLARATION of Keri Curtis Axel re NOTICE OF MOTION AND MOTION to Compel Discovery <i>YASIEL PUIG'S NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY REGARDING SELECTIVE PROSECUTION</i> <a href="#">59</a> filed by Defendant Yasiel Puig Valdes. (Attachments: # <a href="#">1</a> Exhibit EXHIBITS 2-6 ATTACHED TO REPLY DECLARATION OF KERI CURTIS AXEL ISO DEFENDANT YASIEL PUIGS REPLY IN SUPPORT OF MOTION TO COMPEL DISCOVERY REGARDING SELECTIVE PROSECUTION)(Axel, Keri) (Entered: 03/01/2023)

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03/01/2023	<a href="#">81</a>	REPLY Reply in Support of NOTICE OF MOTION AND MOTION to Compel Discovery <i>YASIEL PUIGS NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY REGARDING SELECTIVE PROSECUTION</i> <a href="#">59</a> filed by Defendant Yasiel Puig. (Nuno, Jose) (Entered: 03/01/2023)
03/02/2023	<a href="#">82</a>	<b>SEALED</b> - DEFENDANT YASIEL PUIG VALDES' EX-PARTE APPLICATION FOR ORDER SEALING EXHIBITS 2-6 ATTACHED TO REPLY DECLARATION OF KERI CURTIS AXEL (bm) (Entered: 03/02/2023)
03/02/2023	<a href="#">83</a>	<b>SEALED</b> - DECLARATION OF JOSE R. NUNO IN SUPPORT OF DEFENDANT YASIEL PUIG VALDES' APPLICATION TO SEAL (bm) (Entered: 03/02/2023)
03/02/2023	<a href="#">84</a>	<b>SEALED</b> - PROOF OF SERVICE (bm) (Entered: 03/02/2023)
03/02/2023	<a href="#">85</a>	<b>SEALED</b> - ORDER GRANTING DEFENDANT YASIEL PUIG VALDES' EX PARTE APPLICATION FOR ORDER SEALING EXHIBITS 2-6 ATTACHED TO REPLY DECLARATION OF KERI CURTIS AXEL <a href="#">78</a> (bm) (Entered: 03/02/2023)
03/02/2023	<a href="#">86</a>	<b>SEALED</b> - DEFENDANT YASIEL PUIG VALDES' EXHIBITS 2-6 (bm) (Entered: 03/02/2023)
03/08/2023	<a href="#">91</a>	EX PARTE APPLICATION for Leave to File Sur-Reply. Filed by Plaintiff USA as to Defendant Yasiel Puig Valdes. (Attachments: # <a href="#">1</a> Proposed Order, # <a href="#">2</a> Proposed Sur-Reply, # <a href="#">3</a> Declaration of AUSA Jeff Mitchell, # <a href="#">4</a> Exhibit L) (Boyle, Daniel) (Entered: 03/08/2023)
03/08/2023	<a href="#">92</a>	NOTICE of Manual Filing of of Sealing Application filed by Plaintiff USA as to Defendant Yasiel Puig Valdes (Boyle, Daniel) (Entered: 03/08/2023)
03/10/2023	<a href="#">93</a>	Notice of Appearance or Withdrawal of Counsel: for attorney Emily Rebecca Megan Stierwalt counsel for Defendant Yasiel Puig Valdes. Adding Emily R. Stierwalt as counsel of record for Yasiel Puig Valdes for the reason indicated in the G-123 Notice. Filed by Defendant Yasiel Puig Valdes. (Stierwalt, Emily) (Entered: 03/10/2023)
03/10/2023	<a href="#">94</a>	ORDER RE EX PARTE APPLICATION FOR LEAVE TO FILE A SUR-REPLY by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. IT IS HEREBY ORDERED that the Government's Ex Parte Application <a href="#">91</a> is GRANTED. The Government may file forthwith a sur-reply, in the form attached by the Government to the Government's ex parte application. (gk) (Entered: 03/10/2023)
03/10/2023	<a href="#">95</a>	<b>SEALED</b> - GOVERNMENT'S EX PARTE APPLICATION FOR ORDER SEALING DOCUMENT; DECLARATION OF JEFF MITCHELL (bm) (Entered: 03/10/2023)
03/10/2023	<a href="#">96</a>	<b>SEALED</b> - ORDER SEALING DOCUMENT <a href="#">92</a> (bm) (Entered: 03/10/2023)
03/10/2023	<a href="#">97</a>	<b>SEALED</b> - NOTICE OF LODGING OF EXHIBIT IN SUPPORT OF GOVERNMENT'S SUR-REPLY TO DEFENDANT'S MOTION TO COMPEL DISCOVERY (bm) (Entered: 03/10/2023)
03/10/2023	<a href="#">98</a>	<b>SEALED</b> - EXHIBIT L (bm) (Entered: 03/10/2023)
03/10/2023	<a href="#">99</a>	Supplemental MEMORANDUM in Opposition to NOTICE OF MOTION AND MOTION to Compel Discovery <i>YASIEL PUIGS NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY REGARDING SELECTIVE PROSECUTION</i> <a href="#">59</a> (Attachments: # <a href="#">1</a> Declaration of AUSA Jeff Mitchell)(Boyle, Daniel) (Entered: 03/10/2023)
03/13/2023	100	(IN CHAMBERS) ORDER by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Due to the Court's trial calendar, Defendant's motion to compel discovery regarding selective prosecution <a href="#">59</a> <a href="#">66</a> is hereby continued from March 15, 2023 to March 17, 2023



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		at 3:00 p.m. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (kti) TEXT ONLY ENTRY (Entered: 03/13/2023)
03/15/2023	<a href="#">101</a>	(IN CHAMBERS) ORDER by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. The Court sua sponte continues Defendant's motion to compel discovery regarding selective prosecution <a href="#">59 66</a> from March 17, 2023 to March 24, 2023 at 3:00 p.m. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (kti) TEXT ONLY ENTRY (Entered: 03/15/2023)
03/22/2023	<a href="#">102</a>	(IN CHAMBERS) ORDER by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Pursuant to Defendant's unopposed request, the Court hereby continues Defendant's motion to compel discovery regarding selective prosecution <a href="#">59 66</a> from March 24, 2023 to April 5, 2023 at 2:30 p.m. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (kti) TEXT ONLY ENTRY (Entered: 03/22/2023)
04/05/2023	<a href="#">103</a>	STIPULATION to Continue Trial Date from April 25, 2023 to August 8, 2023 filed by Plaintiff USA as to Defendant Yasiel Puig Valdes (Attachments: # <a href="#">1</a> Proposed Order) (Mitchell, Jeff) (Entered: 04/05/2023)
04/05/2023	<a href="#">104</a>	MINUTES OF DEFENDANT'S MOTION TO COMPEL DISCOVERY REGARDING SELECTIVE PROSECUTION <a href="#">59 66</a> held before Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Following oral argument, the Court advises counsel that the motion shall be taken under submission and a written order will issue. Taking under advisement <a href="#">59</a> MOTION to Compel as to Yasiel Puig Valdes (1); Taking under advisement <a href="#">66</a> MOTION for Order for TO COMPEL DISCOVERY REGARDING SELECTIVE PROSECUTION as to Yasiel Puig Valdes (1) Court Reporter: Miranda Algorri. (rolm) (Entered: 04/06/2023)
04/07/2023	<a href="#">105</a>	ORDER CONTINUING TRIAL DATE AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Jury Trial is continued to 8/8/2023 08:30 AM before Judge Dolly M. Gee. Pretrial Conference is continued to 7/26/2023 02:00 PM before Judge Dolly M. Gee. (gk) (Entered: 04/07/2023)
04/10/2023	<a href="#">106</a>	MINUTES (IN CHAMBERS) ORDER DENYING DEFENDANT'S MOTION TO COMPEL <a href="#">59 66</a> by Judge Dolly M. Gee as to Yasiel Puig Valdes (1). Because Puig has not come forward with some credible evidence of discriminatory intent and effect, the Court respectfully DENIES the motion to compel. IT IS SO ORDERED. (See order for details.) (kti) (Entered: 04/10/2023)
04/25/2023	<a href="#">107</a>	NOTICE of Manual Filing of Under seal documents filed by Plaintiff USA as to Defendant Yasiel Puig Valdes (Mitchell, Jeff) (Entered: 04/25/2023)
04/25/2023	<a href="#">108</a>	<b>SEALED</b> - EX PARTE APPLICATION (bm) (Entered: 04/25/2023)
04/25/2023	<a href="#">109</a>	<b>SEALED</b> - ORDER (bm) (Entered: 04/25/2023)
06/01/2023	<a href="#">110</a>	NOTICE OF MOTION AND MOTION for Order for Regarding Knowing Breach of Plea Agreement Filed by Plaintiff USA as to Defendant Yasiel Puig Valdes. Motion set for hearing on 7/5/2023 at 02:30 PM before Judge Dolly M. Gee. (Boyle, Daniel) (Entered: 06/01/2023)
06/12/2023	<a href="#">116</a>	EX PARTE APPLICATION to Strike Government's Motion for Order re Knowing Breach of Plea Agreement, or in the Alternative, to Continue Hearing Date and Briefing Schedule (ECF No. 110) Filed by Defendant Yasiel Puig Valdes. (Attachments: # <a href="#">1</a> Declaration of Jose R. Nuno, # <a href="#">2</a> Proposed Order) (Nuno, Jose) (Entered: 06/12/2023)
06/13/2023	<a href="#">117</a>	OPPOSITION to EX PARTE APPLICATION to Strike Government's Motion for Order re Knowing Breach of Plea Agreement, or in the Alternative, to Continue Hearing Date and

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		Briefing Schedule ( <i>ECF No. 110</i> ) <a href="#">116</a> filed by Plaintiff USA as to Defendant YASIEL PUIG VALDES. (Boyle, Daniel) (Entered: 06/13/2023)
06/14/2023	<a href="#">118</a>	ORDER CONTINUING HEARING DATE AND BRIEFING SCHEDULE ON GOVERNMENT'S MOTION RE DEFENDANT'S KNOWING BREACH OF PLEA AGREEMENT by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Upon Defendant's Ex Parte Application for an order striking the Government's 6/1/2023 Motion for Order re: Defendant's Knowing Breach of Plea Agreement or in the alternative, an order continuing the hearing date and briefing schedule <a href="#">116</a> , IT IS HEREBY ORDERED that the hearing on the Government's Motion <a href="#">110</a> is continued to 7/19/2023 at 11:00 AM. Puig's deadline to oppose the Motion is 7/5/2023; the Government's reply brief deadline is 7/12/2023. (gk) (Entered: 06/14/2023)
06/15/2023	<a href="#">120</a>	EX PARTE APPLICATION to Continue Trial Date from August 8, 2023 to November 27, 2023. Filed by Defendant Yasiel Puig Valdes. (Attachments: # <a href="#">1</a> Declaration of Jose R. Nuno, # <a href="#">2</a> Exhibit A, # <a href="#">3</a> Exhibit B, # <a href="#">4</a> Proposed Order) (Axel, Keri) (Entered: 06/15/2023)
06/16/2023	<a href="#">121</a>	REPLY in opposition to EX PARTE APPLICATION to Continue Trial Date from August 8, 2023 to November 27, 2023. <a href="#">120</a> filed by Plaintiff USA as to Defendant YASIEL PUIG VALDES. (Boyle, Daniel) (Entered: 06/16/2023)
06/20/2023	<a href="#">122</a>	REPLY In Support of EX PARTE APPLICATION to Continue Trial Date from August 8, 2023 to November 27, 2023. <a href="#">120</a> filed by Defendant Yasiel Puig Valdes. (Axel, Keri) (Entered: 06/20/2023)
06/26/2023	<a href="#">123</a>	ORDER GRANTING EX PARTE APPLICATION TO CONTINUE TRIAL DATE by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Upon Defendant's Ex Parte Application <a href="#">120</a> , IT IS HEREBY ORDERED that the trial in this case is continued to a date to be mutually agreed upon by the parties. Defendant shall file a written Speedy Trial Act waiver in conjunction with any stipulation regarding the new trial date. If the parties are unable to agree on a new trial date, they shall appear for a Status Conference on 6/30/2023 at 11:00 AM. (gk) (Entered: 06/26/2023)
06/30/2023	<a href="#">125</a>	MINUTES OF Status Conference held before Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. The Court and counsel confer regarding the status of the case. Following discussions with counsel, the Court continues the Pretrial Conference to 1/3/2024 02:30 PM before Judge Dolly M. Gee. Jury Trial is continued to 1/16/2024 08:30 AM before Judge Dolly M. Gee. Pretrial motions are due by 12/13/2023, and oppositions are due by 12/20/2023. By 7/7/2023, the parties shall file a stipulation for the briefing schedule with Defendant's signed waiver of the Speedy Trial Act and proposed order re excludable time. Court Reporter: Amy Diaz. (gk) (Entered: 07/03/2023)
07/05/2023	<a href="#">126</a>	NOTICE of Manual Filing of Suarez Declaration filed by Defendant Yasiel Puig Valdes (Axel, Keri) (Entered: 07/05/2023)
07/05/2023	<a href="#">127</a>	NOTICE filed by Defendant Yasiel Puig Valdes <i>NOTICE OF WITHDRAWAL OF CONSENT TO PLEA AGREEMENT</i> , Re: Plea Agreement <a href="#">6</a> (Axel, Keri) (Entered: 07/05/2023)
07/05/2023	<a href="#">128</a>	OPPOSITION to NOTICE OF MOTION AND MOTION for Order for Regarding Knowing Breach of Plea Agreement <a href="#">110</a> filed by Defendant Yasiel Puig Valdes. (Attachments: # <a href="#">1</a> Declaration of Keri Curtis Axel, # <a href="#">2</a> Exhibit A, # <a href="#">3</a> Exhibit B, # <a href="#">4</a> Exhibit C, # <a href="#">5</a> Declaration of Anthony Fernandez)(Axel, Keri) (Entered: 07/05/2023)
07/06/2023	<a href="#">129</a>	<b>SEALED</b> - YASIEL PUIG'S EX-PARTE APPLICATION FOR ORDER SEALING DECLARATION OF PAOLA A. SUAREZ, PHD (bm) (Entered: 07/07/2023)

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07/06/2023	<a href="#">130</a>	<b>SEALED</b> - DECLARATION OF JOSE R. NUNO IN SUPPORT OF DEFENDANT YASIEL PUIG VALDES' APPLICATION TO SEAL DECLARATION OF PAOLA A. SUAREZ, PHD (bm) (Entered: 07/07/2023)
07/06/2023	<a href="#">131</a>	<b>SEALED</b> - ORDER GRANTING DEFENDANT YASIEL PUIG'S EX PARTE APPLICATION FOR ORDER SEALING DECLARATION OF PAOLA A. SUAREZ, PHD <a href="#">126</a> (bm) (Entered: 07/07/2023)
07/06/2023	<a href="#">132</a>	<b>SEALED</b> - DECLARATION PAOLA A. SUAREZ, PHD REGARDING GOVERNMENT'S MOTION FOR ORDER RE ADMISSION OF FACTUAL BASIS (bm) (Entered: 07/07/2023)
07/12/2023	<a href="#">133</a>	EX PARTE APPLICATION for Order for PERMITTING LATE FILING Filed by Plaintiff USA as to Defendant Yasiel Puig Valdes. (Attachments: # <a href="#">1</a> Proposed Order) (Mitchell, Jeff) (Entered: 07/12/2023)
07/12/2023	<a href="#">134</a>	STIPULATION to Continue Trial Date from August 8, 2023 to January 16, 2024 filed by Plaintiff USA as to Defendant Yasiel Puig Valdes (Attachments: # <a href="#">1</a> Proposed Order) (Mitchell, Jeff) (Entered: 07/12/2023)
07/12/2023	<a href="#">135</a>	REPLY In Support Of NOTICE OF MOTION AND MOTION for Order for Regarding Knowing Breach of Plea Agreement <a href="#">110</a> filed by Plaintiff USA as to Defendant Yasiel Puig Valdes. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C)(Boyle, Daniel) (Entered: 07/12/2023)
07/12/2023	<a href="#">136</a>	ORDER PERMITTING LATE FILING by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Upon Plaintiff's Ex Parte Application <a href="#">133</a> , the Court accepts the late filing and extends the deadline to file the stipulation with motion schedule and proposed order with the Speedy Trial Waivers to 7/12/2023. (gk) (Entered: 07/13/2023)
07/12/2023	<a href="#">137</a>	ORDER CONTINUING TRIAL DATE AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Jury Trial is continued to 1/16/2024 08:30 AM before Judge Dolly M. Gee. Pretrial Conference is continued to 1/3/2024 02:30 PM before Judge Dolly M. Gee. (gk) (Entered: 07/13/2023)
07/17/2023	<a href="#">138</a>	EX PARTE APPLICATION for Leave to File Sur-Reply. Filed by Defendant Yasiel Puig Valdes. (Attachments: # <a href="#">1</a> Declaration of Keri Curtis Axel, # <a href="#">2</a> Exhibit A, # <a href="#">3</a> Proposed Order) (Axel, Keri) (Entered: 07/17/2023)
07/18/2023	<a href="#">139</a>	ORDER GRANTING DEFENDANT YASIEL PUIG'S EX PARTE APPLICATION FOR LEAVE TO FILE SUR-REPLY by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Defendant's Ex Parte Application for Leave to File a Sur-Reply <a href="#">138</a> is GRANTED. Puig may file separately on the docket forthwith the sur-reply, in the form attached to Puig's ex parte application. (gk) (Entered: 07/18/2023)
07/18/2023	<a href="#">140</a>	REPLY RE NOTICE OF MOTION AND MOTION for Order for Regarding Knowing Breach of Plea Agreement <a href="#">110</a> filed by Defendant Yasiel Puig Valdes. (Axel, Keri) (Entered: 07/18/2023)
07/19/2023	<a href="#">141</a>	MINUTES OF Motion Hearing held before Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes RE: Government's Motion for Order Re Defendant's Knowing Breach of Plea Agreement <a href="#">110</a> . The Court invites counsel to respond to the tentative ruling. Following oral argument, the Court advises counsel that the motion shall be taken under submission and a written order will issue. Court Reporter: Marea Woolrich. (gk) (Entered: 07/20/2023)

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08/02/2023	<a href="#">142</a>	NOTICE OF MOTION AND MOTION to Compel Discovery Filed by Defendant Yasiel Puig Valdes. Motion set for hearing on 8/30/2023 at 01:30 PM before Judge Dolly M. Gee. (Attachments: # <a href="#">1</a> Declaration of Keri Curtis Axel, # <a href="#">2</a> Exhibit 1, # <a href="#">3</a> Exhibit 2, # <a href="#">4</a> Exhibit 3, # <a href="#">5</a> Exhibit 4) (Axel, Keri) (Entered: 08/02/2023)
08/10/2023	<a href="#">143</a>	MINUTES (IN CHAMBERS) ORDER DENYING MOTION TO FIND KNOWING BREACH OF PLEA AGREEMENT AND AMENDING ORDER GRANTING MOTION TO FIND BREACH OF PLEA AGREEMENT by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Because the plea agreement was never accepted by the Court, the Court finds that its terms were unenforceable and, on that basis, DENIES the Government's Motion to find that the breach was "knowing," so that it may rely on the factual basis of the Agreement as trial evidence <a href="#">110</a> . The order finding a breach of the plea agreement is hereby AMENDED to reflect that the plea agreement was not breached, but was unenforceable for the reasons stated in this order, such that the Government was relieved of its obligations under that agreement <a href="#">51</a> . See document for further details. (gk) (Entered: 08/10/2023)
08/15/2023	<a href="#">144</a>	TRANSCRIPT ORDER as to Defendant Yasiel Puig Valdes DCN number: R23CACA1323 for Court Reporter. Order for: Criminal Non Appeal.(Mitchell, Jeff) (Entered: 08/15/2023)
08/16/2023	<a href="#">145</a>	OPPOSITION to NOTICE OF MOTION AND MOTION to Compel Discovery <a href="#">142</a> (Attachments: # <a href="#">1</a> Exhibit A)(Boyle, Daniel) (Entered: 08/16/2023)
08/18/2023	<a href="#">146</a>	Notice of Appearance or Withdrawal of Counsel: for attorney Riley Portz Smith counsel for Defendant Yasiel Puig Valdes. Adding Riley P. Smith as counsel of record for Yasiel Puig Valdes for the reason indicated in the G-123 Notice. Filed by Defendant Yasiel Puig Valdes. (Attorney Riley Portz Smith added to party Yasiel Puig Valdes(pty:dft))(Smith, Riley) (Entered: 08/18/2023)
08/23/2023	<a href="#">147</a>	REPLY In Support Of NOTICE OF MOTION AND MOTION to Compel Discovery <a href="#">142</a> filed by Defendant Yasiel Puig. (Axel, Keri) (Entered: 08/23/2023)
08/24/2023	<a href="#">148</a>	NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Order,, <a href="#">143</a> Filed by Plaintiff USA as to Defendant Yasiel Puig Valdes. Motion set for hearing on 10/11/2023 at 02:30 PM before Judge Dolly M. Gee. (Boyle, Daniel) (Entered: 08/24/2023)
08/24/2023	<a href="#">149</a>	STIPULATION for Order SETTING BRIEFING SCHEDULE ON MOTION filed by Plaintiff USA as to Defendant Yasiel Puig Valdes (Attachments: # <a href="#">1</a> Proposed Order) (Boyle, Daniel) (Entered: 08/24/2023)
08/25/2023	<a href="#">150</a>	ORDER SETTING BRIEFING SCHEDULE ON MOTION by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Upon Stipulation <a href="#">149</a> , IT IS HEREBY ORDERED that the Government's Motion for Partial Reconsideration and Clarification (the "Motion") <a href="#">148</a> , shall be filed no later than 8/24/2023; Defendant's opposition to the Motion shall be filed no later than 9/20/2023; The Government's reply, if any, shall be filed no later than 9/27/2023; and If the Court elects to hear argument, the Motion shall be heard on 10/4/2023 at 02:30 PM before Judge Dolly M. Gee. (gk) (Entered: 08/25/2023)
08/28/2023	<a href="#">151</a>	MINUTES (IN CHAMBERS) ORDER GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL DISCOVERY REGARDING 1/27/2022 INTERVIEW by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. On 1/27/2022, Defendant Yasiel Puig Valdes was interviewed by members of the Department of Homeland Security, the Internal Revenue Service, and the U.S. Attorney's Office for the Central District of California in connection with their investigation into illegal sports gambling and money laundering. Puig moves to compel the production of interview-related materials authored



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		by various Government representatives who participated in the interview, specifically, notes, outlines and draft outlines summarizing the interview, Government outlines and other preparation material used for questioning Puig, and correspondence between Government agents and attorneys that contain or refer to the substance of the interview <a href="#">142</a> . The motion to compel is GRANTED IN PART. The Government shall disclose the portion of any written record containing the substance of Puig's oral statement, specifically relevant portions of the notes regarding the January 2022 interview of Puig, consistent with Fed. R. Crim. P. 16(a)(1)(B)(ii). Puig's motion is otherwise DENIED. The 8/30/2023 hearing is VACATED. (gk) (Entered: 08/28/2023)
09/15/2023	<a href="#">152</a>	TRANSCRIPT filed as to Defendant Yasiel Puig Valdes for proceedings held on 7/19/2023, 11:07 a.m. Court Reporter: Marea Woolrich, phone number mareawoolrich@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 10/6/2023. Redacted Transcript Deadline set for 10/16/2023. Release of Transcript Restriction set for 12/14/2023.(mwo) (Entered: 09/15/2023)
09/15/2023	153	NOTICE OF FILING TRANSCRIPT filed as to Defendant Yasiel Puig Valdes for proceedings 7/19/2023, 11:07 a.m. re Transcript <a href="#">152</a> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (mwo) TEXT ONLY ENTRY (Entered: 09/15/2023)
09/20/2023	<a href="#">154</a>	OPPOSITION to NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Order,,, <a href="#">143</a> <a href="#">148</a> filed by Defendant Yasiel Puig Valdes. (Axel, Keri) (Entered: 09/20/2023)
09/27/2023	<a href="#">155</a>	REPLY in Support of NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Order,,, <a href="#">143</a> <a href="#">148</a> (Boyle, Daniel) (Entered: 09/27/2023)
10/02/2023	<a href="#">156</a>	EX PARTE APPLICATION to Continue Hearing Date from October 4, 2023 to October 25, 2023. RE: NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Order,,, <a href="#">143</a> <a href="#">148</a> . Filed by Defendant Yasiel Puig Valdes. (Attachments: # <a href="#">1</a> Declaration of Riley P. Smith, # <a href="#">2</a> Exhibit 1, # <a href="#">3</a> Proposed Order) (Axel, Keri) (Entered: 10/02/2023)
10/03/2023	<a href="#">157</a>	MINUTES (IN CHAMBERS) ORDER TAKING MOTION FOR RECONSIDERATION UNDER SUBMISSION, VACATING HEARING, AND DENYING EX PARTE APPLICATION TO CONTINUE HEARING DATE by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. The Court finds that the Government's motion for reconsideration <a href="#">148</a> set for hearing on 10/4/2023, is appropriate for decision without oral argument. Accordingly, the motion is taken UNDER SUBMISSION, and the hearing is VACATED. The ex parte application to continue the hearing date <a href="#">156</a> is DENIED as moot. (gk) (Entered: 10/03/2023)
10/05/2023	<a href="#">161</a>	MINUTES (IN CHAMBERS) ORDER DENYING MOTION FOR PARTIAL RECONSIDERATION <a href="#">148</a> by Judge Dolly M. Gee as to Yasiel Puig Valdes (1). The MFR is respectfully DENIED. IT IS SO ORDERED. (See order for details.) (kti) (Entered: 10/05/2023)
11/01/2023	<a href="#">165</a>	NOTICE OF APPEAL to Appellate Court filed by Plaintiff USA as to Defendant Yasiel Puig Valdes. Filing fee WAIVED. (Mitchell, Jeff) (Entered: 11/01/2023)
11/01/2023	<a href="#">166</a>	NOTIFICATION by Circuit Court of Appellate Docket Number 23-3214 as to Defendant Yasiel Puig Valdes, 9th CCA regarding Notice of Appeal to USCA - Final Judgment <a href="#">165</a> . (mat) (Entered: 11/02/2023)

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11/06/2023	<a href="#">167</a>	18 U.S.C. 3731 CERTIFICATION filed by Plaintiff USA as to Defendant Yasiel Puig Valdes Re: Notice of Appeal to USCA - Final Judgment <a href="#">165</a> (Mitchell, Jeff) (Entered: 11/06/2023)
11/06/2023	<a href="#">168</a>	DESIGNATION OF RECORD ON APPEAL filed by Plaintiff USA as to Defendant Yasiel Puig Valdes re Notice of Appeal to USCA - Final Judgment <a href="#">165</a> (Mitchell, Jeff) (Entered: 11/06/2023)
11/07/2023	<a href="#">169</a>	18 U.S.C. 3731 CERTIFICATION (AMENDED) filed by Plaintiff USA as to Defendant Yasiel Puig Valdes Re: Notice of Appeal to USCA - Final Judgment <a href="#">165</a> (Mitchell, Jeff) (Entered: 11/07/2023)
11/13/2023	<a href="#">170</a>	NOTICE TO FILER OF DEFICIENCIES in Filed Document RE: Miscellaneous Document <a href="#">167</a> . The following error(s) was/were found: Local Rule 11-3.8 title page is missing, incomplete, or incorrect. Other error(s) with document(s): No Title/Caption Page per Local Rule 11-3.8.. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (mat) (Entered: 11/13/2023)
11/13/2023	<a href="#">171</a>	NOTICE TO FILER OF DEFICIENCIES in Filed Document RE: Miscellaneous Document <a href="#">169</a> . The following error(s) was/were found: Local Rule 11-3.8 title page is missing, incomplete, or incorrect. Other error(s) with document(s): No Title/Caption Page per Local Rule 11-3.8.. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (mat) (Entered: 11/13/2023)
11/29/2023	<a href="#">172</a>	EX PARTE APPLICATION for Order for MODIFIED PROTECTIVE ORDER REGARDING DISCOVERY Filed by Plaintiff USA as to Defendant Yasiel Puig Valdes. (Attachments: # <a href="#">1</a> Proposed Order) (Mitchell, Jeff) (Entered: 11/29/2023)
11/30/2023	<a href="#">173</a>	EX PARTE APPLICATION for Extension of Time to File Response/Reply as to EX PARTE APPLICATION for Order for MODIFIED PROTECTIVE ORDER REGARDING DISCOVERY <a href="#">172</a> Filed by Defendant Yasiel Puig Valdes. (Attachments: # <a href="#">1</a> Declaration of Jose R. Nuno, # <a href="#">2</a> Exhibit A, # <a href="#">3</a> Proposed Order) (Nuno, Jose) (Entered: 11/30/2023)
12/01/2023	<a href="#">174</a>	ORDER GRANTING YASIEL PUIG'S UNOPPOSED EX PARTE APPLICATION TO EXTEND TIME TO RESPOND TO GOVERNMENT'S EX PARTE APPLICATION by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. The Court, having considered Defendant Yasiel Puig's unopposed ex parte application <a href="#">173</a> , IT IS HEREBY ORDERED that Puig's deadline to oppose the Government's 11/29/2023 Ex Parte Application for Modified Protective Order <a href="#">172</a> is continued until 12/6/2023. (gk) (Entered: 12/01/2023)
12/01/2023	<a href="#">175</a>	TRANSCRIPT ORDER as to Defendant Yasiel Puig Valdes for Court Reporter. Order for: Criminal Non Appeal. Court will contact Roberts Fernandez at Robert.fernandez@tr.com with further instructions regarding this order. Transcript preparation will not begin until payment has been satisfied with the court reporter.(aa) (Entered: 12/01/2023)
12/06/2023	<a href="#">176</a>	MEMORANDUM in Opposition to EX PARTE APPLICATION for Order for MODIFIED PROTECTIVE ORDER REGARDING DISCOVERY <a href="#">172</a> filed by Defendant Yasiel Puig Valdes. (Attachments: # <a href="#">1</a> Declaration of Jose R. Nuno, # <a href="#">2</a> Exhibit A, # <a href="#">3</a> Exhibit B)(Nuno, Jose) (Entered: 12/06/2023)
12/07/2023	<a href="#">177</a>	RESPONSE to Memorandum in Opposition to Motion, <a href="#">176</a> ,filed by Plaintiff USA as to Defendant Yasiel Puig Valdes (Mitchell, Jeff) (Entered: 12/07/2023)

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12/07/2023	<a href="#">178</a>	EX PARTE APPLICATION to Vacate TRIAL DATE AND MOTION SCHEDULE Filed by Plaintiff USA as to Defendant Yasiel Puig Valdes. (Attachments: # <a href="#">1</a> Proposed Order) (Boyle, Daniel) (Entered: 12/07/2023)
12/08/2023	<a href="#">179</a>	OPPOSITION to EX PARTE APPLICATION to Vacate TRIAL DATE AND MOTION SCHEDULE <a href="#">178</a> filed by Defendant Yasiel Puig Valdes. (Axel, Keri) (Entered: 12/08/2023)
12/11/2023	<a href="#">180</a>	REPLY in Support of EX PARTE APPLICATION to Vacate TRIAL DATE AND MOTION SCHEDULE <a href="#">178</a> (Boyle, Daniel) (Entered: 12/11/2023)
12/12/2023	<a href="#">181</a>	ORDER VACATING TRIAL DATE AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes. Upon the Government's Ex Parte Application <a href="#">178</a> , the trial date and all pending pretrial deadlines in this matter are VACATED, pending resolution of the Government's interlocutory appeal. The Government shall notify the Court within five days of the resolution of the Government's interlocutory appeal. At the conclusion of the appeal, the parties shall meet and confer and request either a status conference or file a stipulation to set a new pretrial conference and trial date. (gk) (Entered: 12/13/2023)
12/13/2023	<a href="#">182</a>	MODIFIED PROTECTIVE ORDER REGARDING DISCOVERY CONTAINING CONFIDENTIAL INFORMATION by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes, re Plaintiff's Ex Parte Application <a href="#">172</a> . See document for details. (gk) (Entered: 12/14/2023)
12/14/2023	<a href="#">183</a>	MODIFIED PROTECTIVE ORDER REGARDING DISCOVERY CONTAINING CONFIDENTIAL INFORMATION by Judge Dolly M. Gee as to Defendant Yasiel Puig Valdes, re Plaintiff's Ex Parte Application <a href="#">172</a> . See document for details. (gk) (Entered: 12/15/2023)

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